

CITY COUNCIL

1520 AVENUE K



DATE: 11/8/2010

CALL TO ORDER: 7:00 p.m.

INVOCATION: Pastor Brian McClane
Northpointe Church

PLEDGE OF ALLEGIANCE: American Legion Post 321 Honor Guard and
Cub Scout Pack 235, Den 3 Webelos w/Thomas
Elementary

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u></p> <p>Proclamation: Veterans Day</p> <p>Proclamation: National Nurse Practitioners Week</p> <p>Proclamation: Animal Shelter Week</p> <p>Special Recognition: Bradley Robertson - SWANA National Truck Road-E-O Third Place in Automated</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Library Advisory Board</u></p> <p>Shelly Bracken</p> <p><u>Planning and Zoning Commission</u></p> <p>Fred Balda</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>COMMENTS OF PUBLIC INTEREST</u> <u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u> (a) October 25, 2010</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2010-211-C for a one (1) year contract with three (3) optional one year renewals for Security Personnel Services for Municipal Courts to Allegiance Security Group, LLC in the amount of \$57,048 and authorizing the City Manager to execute all necessary documents.</p> <p>(c) Bid No. 2010-247-B for Plano Senior Center Roof Replacement to Tice Enterprises, Ltd., in the amount of \$131,988 and authorizing the City Manager to execute all necessary documents.</p> <p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> <p>(d) RFQ No. 2010-138-B for a one (1) year contract with six (6) optional one year renewals for the purchase of Advertising Agency services for the Plano Convention and Visitors Bureau to The Atkins Group in the amount of \$457,666 and authorizing the City Manager to execute all necessary documents.</p> <p>(e) To approve an Engineering Services Contract by and between the City and Birkhoff, Hendricks & Carter, L.L.P., in the amount of \$359,100 for Custer Pump Station, and authorizing the City Manager to execute all necessary documents.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(f)	<p>Reimbursement of Oversize Participation</p> <p>To approve and authorize reimbursement to Wolverine Equities Company 2000 Highway 190, L.P. for oversize participation for public improvements associated with the construction of Mapleshade Road from Ohio Drive to Coit Road, in the amount of \$53,357.</p>	
(g)	<p>Approval of Expenditure</p> <p>To approve of the purchase of replastering the Oak Point Center indoor pool in the amount of \$128,580 from Sunbelt Pools through an existing contract or agreement with BuyBoard and authorizing the City Manager to execute all necessary documents (BuyBoard Contract 288-08).</p>	
(h)	<p><u>Adoption of Resolutions</u></p> <p>To approve the terms and conditions of a First Addendum to the Real Estate Contract by and between the City of Plano, Texas and Emajeon Haggard Hall relating to the purchase of 51.103 acres at the northwest corner of Alma Drive and Park Boulevard in the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p>	
(i)	<p>To authorize the payment of disputed sales tax in the amount of \$82,502 for certain operations at the Pecan Hollow Golf Course and for the City Manager to execute any agreements to effectuate this settlement; and providing an effective date.</p>	
(j)	<p><u>Adoption of Ordinances</u></p> <p>To transfer the sum of \$82,502 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2010-11 for the purpose of providing funds for payment of disputed sales tax for certain operations at the Pecan Hollow Golf Course; amending the budget of the City and Ordinance 2010-9-8, declaring this action to be a case of public necessity; and providing an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>Consideration of a Resolution to ratify the terms and conditions of a Contract by and between Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, a Delaware corporation, hereinafter referred to as "Contractor", and the City of Plano, Texas, a home-rule municipality, hereinafter referred to as "City", to be effective upon approval of the City Council and subsequent execution by the City Manager.</p>	
(2)	<p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2010-17 to amend the Ordinance of the City of Plano, Texas, amending Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to unified-lot signs; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano</p>	
(3)	<p>Consideration of a Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; providing for a real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.</p>	
(4)	<p>Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; authorizing its execution by the City Manager; and providing an effective date.</p>	
(5)	<p>Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
(6)	<p>Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Telect, Inc., a Washington corporation; authorizing its execution by the City Manager and providing an effective date.</p>	
	<p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/08/10		
Department:		City Manager's Office		
Department Head		Thomas Muehlenbeck		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Proclamation: Veterans Day				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	



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Department Head		Thomas Muehlenbeck		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Proclamation: National Nurse Practitioners Week				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
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CAPTION				
Proclamation: Animal Shelter Week				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
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Department:		City Manager's Office		
Department Head		Thomas Muehlenbeck		
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CAPTION				
Special Recognition: Bradley Robertson - SWANA National Truck Road-E-O Third Place in Automated				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
October 25, 2010**

COUNCIL MEMBERS

Phil Dyer, Mayor
Lee Dunlap, Mayor Pro Tem
Pat Miner, Deputy Mayor Pro Tem
Ben Harris
André Davidson
Lissa Smith
Harry LaRosiliere
Jean Callison

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
LaShon Ross, Deputy City Manager
Mark Israelson, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:05 p.m., Monday, October 25, 2010, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice; to receive information regarding Economic Development, Section 551.087; and Personnel, Section 551.074; for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:50 p.m.

Consideration and Action Resulting From Executive Session

No items were brought forward.

Personnel Appointments: Self Sufficiency Committee

The Council deferred the appointment.

Energy Efficiency Community Block Grant Update

Director of Environmental Services and Sustainability Nevil spoke to receipt of \$2.5 million in grant funds and work to prioritize and develop projects with long-term savings and positive environmental impact. She advised that the only complete project is the installation of PC Shutdown Software which allows technicians to "wake up" computers for upgrades.

Ms. Nevil reviewed the status of other projects including LED Parking Lot Lighting, Solar Water Heater - Fire Station 11, and Replacement Chillers - Haggard Library and Senior Center. She advised that work has not started on solar projects or charger stations and spoke to bidding for the *Water-to-Fuel Feasibility Study* and demos of dual-arm trash collection trucks.

Sustainability & Environmental Services Manager Smouse spoke to the Energy Audit and Weatherization Grant Program (\$625,000) available for City households and advised that applications include attic insulation, caulking/weather-stripping, water heater jackets, outlet/light switch gaskets, replacement/repair of duct sealing, and solar screen/window films. Mr. Smouse spoke to the Residential Energy Improvement Loan Program (\$750,000) for more complete energy projects and spoke to funding methods and program development for applications including complete weatherization, energy monitoring/management systems, CFL light fixtures, tankless water heaters, HVAC, heat pump, window replacement, solar hot water or photovoltaic arrays and geothermal heating/cooling systems. Ms. Nevil responded to the Council, advising that monies must be spent by September 2012.

Discussion/Direction re Annual Fire Inspection Program

Fire Marshall Kerr spoke to charging for annual business fire inspections and advised that expansions could not be made with existing personnel. He spoke to 3,000 buildings subject to inspections with 1,200 high-risk locations currently inspected annually by certified personnel at a cost of \$355,000 and other locations reviewed through surveys conducted by non-certified Staff. Mr. Kerr advised that expansion could be accomplished through implementation of fees (\$649,000 in revenues) and the addition of two state-certified inspectors with 1,800 businesses inspected annually and 1,200 biennially. He spoke to issues of timing as training is limited to Collin County College with courses beginning in January; recommended that PISD, Collin County government facilities, community college campuses and City buildings be exempt from fees; and advised regarding a proposed education campaign.

Mr. Kerr responded to the Council, advising that current Staff is cross-trained to perform inspections when necessary and spoke to the impact of inspections on ISO ratings, the lack of other training sessions on a regular basis and review of potential fee collection processes. City Manager Muehlenbeck spoke to this as an ongoing fee and as another cost for the commercial sector. Mr. Kerr further responded to the Council, advising that entities may receive an insurance rate benefit based on an approved inspection, spoke to Staffing while new inspectors are being trained, and stated concern regarding the current conditions of locations that are not being fully inspected. He advised that apartments and hotel/motels are inspected annually and to Property Standards personnel inspections which are uncertified. Council Member LaRosiliere spoke to the importance of the program and Council Member Davidson spoke to consideration of the fee schedule prior to implementation. Mayor Dyer spoke to development of a modest fee to help defray some of the costs/reduce expenses and to moving ahead with hiring/training with implementation and fees to follow to which the Council concurred.

Comprehensive Monthly Financial Report

The Council postponed receipt of the report until the November 8, 2010 meeting.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

Mayor Pro Tem Dunlap requested that Consent Agenda Item "B," Bid No. 2010-230-B for the 2009-2010 Arterial Concrete Pavement Rehab, Spring Creek Parkway - Preston Road to Custer Road to Jim Bowman Construction Company, L.P. be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:54 p.m.

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

PLANO CITY COUNCIL

October 25, 2010

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Pat Miner, Deputy Mayor Pro Tem
Ben Harris
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Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, October 25, 2010, at 7:16 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Deacon Mike Seibold of St. Elizabeth Ann Seton Catholic Church and the Pledge of Allegiance was led by Cub Scout Pack 283 of Brinker and Centennial Elementary Schools.

Special Recognition of Bradley Robertson was postponed. Mayor Dyer received a presentation recognizing the City of Plano as Fit-Friendly. Mayor Dyer administered an oath of office to Cynthia Nye of the Self Sufficiency Committee and presented Certificates of Appreciation to outgoing board and commission members.

Comments of Public Interest

No one appeared to speak.

Consent Agenda

Mayor Pro Tem Dunlap requested that Consent Agenda Item "B" be removed for individual consideration due to a possible conflict of interest.

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Deputy Mayor Pro Tem Miner, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item "A")

October 11, 2010

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

CSP No. 2010-226-B for Stadium Ground Storage Reservoir Repaint - Reservoir No. 1 and Reservoir No. 4 project to J.R. Stelzer Co. in the amount of \$886,020 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "C")

Bid No. 2010-241-B for the 2009-2010 Residential Concrete Pavement Rehabilitation Project Zone J5 North to Jerusalem Corporation in the amount of \$1,113,571 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "D")

Purchase from an Existing Contract

To approve the purchase of seven (7) Caterpillar Backhoe Loaders to be utilized by Utility Cut Services, Utility Operations, Streets, and Drainage Operations in the amount of \$501,851 from Holt Company of Texas through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #268-07) (Consent Agenda Item "E")

To approve a contract for the purchase of a Premier Support Services agreement, in the amount of \$68,310 from Microsoft Corporation, through an existing contract with the State of Texas Department of Information Resources (DIR), and authorizing the City Manager to execute all necessary documents. (DIR Contract No. DIR-SDD-821) (Consent Agenda Item "F")

Approval of Change Order

To Motorola, Inc., decreasing the contract by \$75,000 to reduce the number of Motorola Mesh poles to be installed. Change Order No. 5, Original Bid No. 2008-41-I, HGAC Contract No. RA01-06. (Consent Agenda Item "G")

To Tiseo Paving Company, increasing the contract by \$66,304 for McDermott Road from Ohio Drive to Coit Road, Change Order No. 3. Original Bid No. 2009-143-B. (Consent Agenda Item "H")

To Insituform Technologies, Inc., increasing the contract by \$111,078 for Russell Creek Sewer Main Rehab Phase 1, Change Order No. 1. Original Bid No. 2010-83-B. (Consent Agenda Item "I")

Adoption of Strategic Plan

To adopt an amendment to the Strategic Plan: 2010-2015 (Consent Agenda Item "J")

Adoption of Resolutions

Resolution No. 2010-10-16(R): To approve an agreement between the City of Plano and SunGard Public Sector Inc., a sole source vendor, for the maintenance and support of H.T.E. software applications in the amount of \$126,498; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "K")

Resolution No. 2010-10-17(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and Denton County, Texas and providing terms and conditions for receipt of funding for Library Services in the amount of \$9,966 from Denton County, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "L")

Adoption of Ordinances

Ordinance No. 2010-10-18: To amend specific sections of Ordinance No. 2010-9-5 codified as Section 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano to clarify the water rate schedule as provided in Section 21- 147(1)(b)(3) for residential customers and Section 21-147(3)(b)(3) for customers with separately metered irrigation systems, and distinguish fees for residential and commercial customers with 1-inch metered irrigation use under Section 21-147(3)(a) effective November 1, 2010, and providing a repealer clause, a severability clause, a savings clause, and an effective date. (Consent Agenda Item “M”)

Ordinance No. 2010-10-19: To approve the carrying forward of certain fiscal year 2009-10 funds to fiscal year 2010-11; and providing an effective date. (Consent Agenda Item “N”)

END OF CONSENT

Due to a possible conflict of interest, Mayor Pro Tem Dunlap stepped down from the bench on the following item.

Bid No. 2010-230-B for the 2009-2010 Arterial Concrete Pavement Rehab, Spring Creek Parkway - Preston Road to Custer Road to Jim Bowman Construction Company, L.P. in the amount of \$774,435 and authorizing the City Manager to execute all necessary documents (Consent Agenda Item “B”)

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, the Council voted 7-0 to approve Bid No. 2010-230-B for the 2009-10 Arterial Concrete Pavement Rehab (Spring Creek Parkway-Preston Road to Custer Road) to Jim Bowman Construction Company, L.P. in the amount of \$774,435.

Mayor Pro Tem Dunlap resumed his seat at the bench.

Ordinance No. 2010-10-20: To repeal Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano and approving a new Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano, providing terms and conditions upon which Allied Waste Systems, Inc. shall be granted an exclusive Private Franchise for collection and disposal of solid waste for commercial customers located within the City of Plano in accordance with Article 10-A of the City Charter and a non-exclusive Private Franchise for collection of recyclable materials from commercial customers located in the City of Plano; and authorizing its execution by the City Manager or his designee; providing a repealer clause, a severability clause, a savings clause, a penalty clause, providing for publication and an effective date. Second Reading (First Reading Approved – September 13, 2010) (Regular Agenda Item “1”)

Director of Environmental Services and Sustainability Nevil spoke to negotiating the agreement in lieu of bidding and the value of the partnership (\$873,600) including the Reduced Recycling Processing Fee, Commercial Recycling Program, Live Green Expo, Environmental Community Awards and Annual Employee Awards Function. She advised that over the life of the contract, these items contribute \$6 million and spoke to the \$6 million in cost avoidance related to the diversion program. Ms. Nevil reviewed Plano rates with those from other cities and quotes from other firms, advising rates are in line.

Ordinance No. 2010-10-20 (cont'd)

Ms. Nevil spoke to cities with long-term contractual relationships with haulers and building partnerships. She advised that under an "open market" concept it would be difficult to ensure that all waste is disposed at the North Texas Municipal Water District (NTMWD) as required and responded to the Council that the City has been with Allied Waste since the early 1980's at which time the contract went through the bidding process. Resident Dwayne Clark spoke to viewing commercial trash collection as a competitive market, to use of NTMWD for disposal and to the bias nature of information provided.

Ms. Nevil spoke to companies that may not utilize NTMWD and stated concerns regarding disruption to users if a new vendor were selected, lack of a relationship and guarantees for the quality of work. She spoke to negotiating the commercial franchise fee and recycling processing fees concurrently, cost savings and the contract term of seven years with two, three-year renewals. The Council discussed the length of the contract and service provided by Allied Waste. Reid Donaldson of Allied Waste spoke to the depreciation of vehicles being seven years which coincides with the term of the contract, customer service, equipment costs, the material recovery center and typical lengths of contracts. Ms. Nevil responded to the Council, advising that unbundling services may result in higher rates and less program support. Dick Dimien of IESI stated interest in bidding for the contract. Ms. Nevil advised that IESI rates were included in the information provided and stated that if Council were to delay, the recycling processing would need to be renegotiated which may result in the loss of \$1 million over ten years.

Council Member Harris spoke to the long-term nature of the contract without implementation of a bid process and Ms. Nevil advised that after seven years the Council would have the option of going out to bid. Mayor Dyer spoke to the positive partnership and disruption should a change be made and Council Member LaRosiliere spoke to the length of contracts in other cities and allowing future Council the opportunity to review and determine the need for a bid process. He made a motion for approval which Deputy Mayor Pro Tem Miner seconded. (No vote was taken at this time.)

Mr. Donaldson responded to Council Member Smith regarding the limited number of cities in the Metroplex having a Material Recovery Facility; equipment, employees and benefits of trucks utilizing a Plano location; and the cyclical nature of the recyclable marketplace. Ms. Smith spoke to having more time for consideration in the future.

Mayor Dyer restated the motion made by Council Member LaRosiliere and seconded by Deputy Mayor Pro Tem Miner to repeal Ordinance No. 2000-8-4 in order to terminate the existing Private Franchise Agreement by and between the City of Plano, Texas, and Allied Waste Systems, Inc. and approving a new Private Franchise Agreement for collection and disposal of solid waste for commercial customers located within the City; and further adopt Ordinance No. 2010-10-20. The Council voted 8-0 and the motion carried.

Public Hearing and adoption of Ordinance No. 2010-10-21 to designate a certain area within the City of Plano as Reinvestment Zone No. 123 for a tax abatement consisting of a 14.36 acre tract of land located at the southwest corner of Shiloh Road and East Plano Parkway in the City of Plano, Texas; establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date. (Regular Agenda Item "2")

Ordinance No. 2010-10-21 (cont'd)

Director of Finance Tacke spoke to statutes requiring the establishment of reinvestment zones which include a Public Hearing and to this agreement based on an estimated \$4.5 million in real and \$900,000 in business personal property for a period of ten years from January 1, 2011 through December 31, 2020 at the rate of fifty percent for real property; stating the impact would be \$10,993.50 at the current tax rate.

Mayor Dyer opened the Public Hearing. Resident Kevin Butler inquired and was advised that this property is not the location under consideration by the Samaritan Inn. No one else appeared to speak for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member LaRosiliere and seconded by Deputy Mayor Pro Tem Miner the Council voted 8-0 to designate Reinvestment Zone No. 123 for a tax abatement consisting of a 14.36 acre tract of land located at the southwest corner of Shiloh Road and East Plano Parkway in the City of Plano, Texas; and further to adopt Ordinance No. 2010-10-21.

Resolution No. 2010-10-22(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas, and Air System Components, Inc., a Delaware Corporation; providing for a real property tax abatement; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "3")

Director of Finance Tacke advised that the agreement would be between the City of Plano and Air System Components, Inc. for 90,000 square feet of existing space for ten years with retention, transfer or creation of 130 full-time job equivalents.

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Davidson, the Council voted 8-0 to approve the terms and conditions of an agreement by and between the City and Air System Components, Inc., providing for a real property tax abatement; and further to adopt Resolution No. 2010-10-22(R).

Resolution No. 2010-10-23(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Air System Components Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "4")

Director of Finance Tacke advised that Air System Components Inc., would occupy no less than 90,000 square feet of space and retain, transfer or create up to 100 full-time jobs by November 1, 2010. Ms. Tacke advised that the terms of the agreement are for ten years in an amount of up to \$40,000.

Upon a motion made by Council Member Harris and seconded by Council Member Callison, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement between the City and Air System Components Inc. and further to adopt Resolution No. 2010-10-23(R).

Public Hearing and adoption of Ordinance No. 2010-10-24 as requested in Zoning Case 2010-15 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-207-Retail on 119.9± acres located at the northwest corner of Shiloh Road and Renner Road in the City of Plano, Collin County, Texas, to modify the development standards and definitions, and to limit uses within certain areas of the district; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Turnpike Commons Plano, LLC (Regular Agenda Item “5”)

Planning Manager Firgens spoke to rezoning of the property in 2008 to allow for retail/residential/office development and the current request for amendments to modify the development standards and limit uses to certain areas. She advised that it would: 1) revert the 16-acre tract at the northwest corner of Shiloh and Renner Roads to a retail base allowing for retail and service uses; 2) limit multi-family zoning to the interior and northern tracts with retail along roadways and the ground floor of multi-family units with a regional theater use near US 190; and 3) establish definitions for quasi-private streets, reflect permitted uses and development standards for tracts. She advised that the Planning and Zoning Commission recommended approval as follows: (Additions are indicated in underlined text and deletions are shown as strike-through text.)

The permitted uses and standards shall be in accordance with the Retail (R) zoning district unless otherwise specified herein.

General Standards

1. The zoning exhibit shall be adopted as part of the ordinance.
2. Maximum Lot Coverage: 50% increased to 70% if structured parking is provided
3. Maximum Floor to Area Ratio: 1.75:1
4. Maximum Height: Five story (75 feet) for buildings with multifamily residential use; 20 story for all other buildings
5. Minimum Side Yard: None, except as required by building or fire codes
6. Minimum Rear Yard: None, except as required by building or fire codes
7. Parking Regulations:
 - a. The minimum required parking shall be as follows:
 - Multifamily - One Bedroom or Less: One parking space per unit
 - Two Bedrooms: One and one-half parking spaces per unit
 - Three Bedrooms or More: Two spaces per unit
 - Freestanding Restaurant - One space per 100 square feet of floor area
 - Hotel: See Section 3.1100 (Off-Street Parking and Loading)
 - Theater: See Section 3.1100 (Off-Street Parking and Loading)
 - All Other Nonresidential Uses: One space per 300 square feet of floor area.
 - b. On-street parking may count toward required parking and shall be permitted on both sides of interior public and quasi-public streets and fire lanes, except where prohibited for vehicular, fire, or pedestrian safety. On-street parking may be parallel, angle, or 90° to the street. Where on-street parking is provided, islands shall be placed as a break to delineate travel lanes. An island break of a minimum six feet in width shall be placed no less than every 150 feet of continuous on-street parking.

Ordinance No. 2010-10-24 (cont'd)

- c. No off-street loading spaces are required. Off-street loading for the loading and unloading of merchandise and goods must not occur in public streets or fire lanes, but may occur in parking areas or private drive aisles. Designated off-street loading spaces for nonresidential uses, if provided, may not be located adjacent to or across a street or alley from buildings containing residential uses unless the loading dock is screened by solid metal gates, masonry screening walls, overhead doors, buildings, or any combination of these.
- d. Except for freestanding restaurants, no parking is required for outdoor patio and sidewalk dining areas or other public seating areas and open space.

Design Standards

~~8.~~ 1. Street Pattern: The maximum block length shall be 500 feet. Public streets, quasi-public streets, and/or fire lanes may be used to obtain this required block length.

~~9.~~ 2. Streetscape:

- a. Along Wynnwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, sidewalks with a minimum width of six feet shall be placed no more than six feet from back of curb. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
- b. Outdoor patio and sidewalk dining, as well as other public seating areas, are permitted within public rights-of-way provided accessible pathways are maintained.

3. Quasi Public Streets definition: Quasi-public streets are privately owned and maintained drives open to public access. A fire lane shall be located within all quasi-public streets. Lots may derive required street frontage from quasi-public streets and may be platted to the centerline of quasi-public streets.

~~10.~~ 4. Building Design:

- a. Nonresidential, ~~multi-use~~ buildings, except for parking garages, shall have a minimum of 40% of the ground floor comprised of window area. Buildings fronting S. H. 190 frontage road, Renner Rd., and Shiloh Rd. are exempt from this requirement. For the purposes of this standard, ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.
- b. Canopies, balconies, stoops, bay windows, awnings, and other building projections may encroach up to five feet into the public right-of-way provided accessible pathways are maintained.

~~11.~~ 5. Landscaping and Open Space:

- a. Except as stated in standard ~~11.~~ 5.b. below, landscaping shall be provided per Section 3.1200 (Landscaping Requirements) and Section 4.700 (190 Tollway/Plano Parkway Overlay District) except as follows:
 - i. No landscape edge is required along Wynnwood Dr., Wynhurst Dr., Wyngate Blvd., Wynview Dr., and required named quasi-public streets, except for lots located within Tract 1.
 - ii. Landscape edge width may be reduced to 10 feet along Shiloh Rd., north of Wynview Dr. and along Renner Rd. between Wyngate Blvd. and Shiloh Rd.

Ordinance No. 2010-10-24 (cont'd)

- b. A minimum five-foot landscape edge shall be provided between all surface parking lots and public and quasi-public streets, except for lots located within Tract 1. Street trees shall be provided at a rate of one tree per 50 linear feet of street.
 - c. A minimum of two acres of open space shall be provided and shall be open to the public at all times. Open space shall have a minimum dimension of 80 feet.
- ~~12.~~ 6. Screening:
- a. The rear and service sides of nonresidential buildings oriented toward residential use or open space shall be screened as provided in Section 3.1000 (Screening, Fence, and Wall Regulations).
 - b. Refuse and recycling containers shall not be located within 30 feet of a public or quasi-public street, unless internal to the building, and shall be screened from view from streets and open space in accordance with Section 3.1000 (Screening, Fence, and Wall Regulations).
- ~~13.~~ 7. Fencing: For residential use only, fencing is allowed in the front yard setback up to eight feet in height. Fencing must be a minimum of 50% open.
- ~~14.~~ 8. Signage:
- a. For buildings fronting S.H. 190 frontage road, Renner Rd., and Shiloh Rd., signage must comply with Section 3.1600 (Sign Regulations) and Section 4.700 (190 Tollway/Plano Parkway Overlay District).
 - b. Signage for all other buildings must comply Area A standards within Subsection 3.1605 (Downtown Sign District). Additionally, freestanding, single tenant buildings may have monument signs per Section 4.700 (190 Tollway/Plano Parkway Overlay District).

Multifamily Residential Development Standards

- ~~15.~~ 1. Maximum Number of Dwelling Units: 1,200 units
- ~~16.~~ 2. Minimum Density: 35 dwelling units per acre
- ~~17.~~ 3. Multifamily development shall be exempt from the supplemental regulations of Subsection 3.104 (Multifamily Residence).

Standards Specific to Tracts 1 and 5-10

- 1. Tract 1 shall be developed in accordance with Retail (R) zoning district area, yard and bulk requirements.
- ~~18.~~ 2. Uses:
- a. Regional theater use is permitted. Multifamily use is an additional permitted use.
 - b. Car wash use is prohibited.
- ~~19.~~ Building Design:
- a. Buildings fronting to Renner Road or Shiloh Road:
 - i. The minimum front yard setback shall be 10 feet.
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.
 - b. Buildings fronting to Wynwood Drive, Wynhurst Drive, Wyngate Boulevard, or Wynview Drive:
 - i. There is no minimum front yard setback.

Ordinance No. 2010-10-24 (cont'd)

- ~~ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.~~
- e. Buildings fronting required named quasi-public streets:
 - ~~i. Front yard setbacks are measured from the street easement line.~~
 - ~~ii. There is no minimum front yard setback.~~
 - ~~iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.~~

Standards Specific to Tract 2

~~20.~~ 1. Uses:

- a. Regional theater use is permitted.
- b. Car wash use is prohibited.

~~21.~~ 2. Building Design:

- a. Buildings fronting to Renner Rd. ~~or Shiloh Rd.:~~
 - i. Minimum front yard setback: 30 feet
 - ii. Maximum front yard setback: None
- b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:
 - i. Minimum front yard setback: None
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.

Standards Specific to Tracts 3 and 4

~~22.~~ 1. Uses:

- a. Regional theater use and multifamily use are is additional permitted uses.
- b. Car wash use is prohibited.

~~23.~~ Street Pattern: ~~Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements in standard 9 above.~~

~~24.~~ 2. Building Design:

- a. Buildings fronting to Wynnwood Dr., or Wynthurst Dr., ~~Wyngate Blvd., or Wynview Dr.:~~
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
- b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Maximum Front Yard Setback: 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Ordinance No. 2010-10-24 (cont'd)

Standards Specific to Tract 4

1. Uses:
 - a. Multifamily use is permitted.
 - b. Car wash use is prohibited.
 - c. Office, retail, service and restaurant uses may only occupy space within the first floor of multi-story residential buildings. Free standing office, retail, service and restaurant buildings are prohibited.
2. Street Pattern: Tract 4 shall be bisected by a named quasi-public street and shall comply with the streetscape requirements as stated in 'Design Standards 2. Streetscape' above.
3. Building Design:
 - a. Buildings fronting to Wynnwood Dr., Wynhurst Dr., Wyngate Blvd., or Wynview Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 50% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 50% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 100 feet if parking or drive aisles are located between the building face and the street.
 - b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. The maximum front yard setback shall be 15 feet unless restricted by easements. If easements are present, the facade must be built to the easement line.

Standards Specific to Tracts 5 & 7

1. Uses:
 - a. Multifamily use is permitted.
 - b. Car wash use is prohibited.
 - c. Retail, service and restaurant uses are prohibited.
2. Building Design:
 - a. Buildings fronting to Wynnwood Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.
 - b. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

Ordinance No. 2010-10-24 (cont'd)

Standards Specific to Tracts 6, 8, 9 & 10

1. Uses: Car wash use is prohibited.
2. Building Design:
 - a. Buildings fronting to Renner Rd. or Shiloh Rd.:
 - i. The minimum front yard setback shall be 10 feet.
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 30 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line. The 30 feet distance may be increased to a maximum of 85 feet if parking or drive aisles are located between the building face and the street.
 - b. Buildings fronting to Wyngate Blvd. or Wynview Dr.:
 - i. Minimum Front Yard Setback: None
 - ii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the right-of-way line unless restricted by easements. Where easements are present, a minimum of 60% of each facade must be built to the easement line.
 - c. Buildings fronting required named quasi-public streets:
 - i. Front yard setbacks are measured from the street easement line.
 - ii. Minimum Front Yard Setback: None
 - iii. Buildings shall be constructed such that a minimum of 60% of the facade falls within 15 feet of the street easement line.

Mayor Dyer opened the Public Hearing. David Hicks, representing the owners spoke to changes in development plans since 2008. Ms. Firgens responded to the Council, advising that the density would be lower than that at Legacy Town Center. Director of Planning Jarrell advised that this request does not include phasing requirements for development and advised that the Plano Independent School District did not note any overcrowding impacts during review in 2008. No one else spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member LaRosiliere, the Council voted 8-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, so as to amend Planned Development-207-Retail on 119.9± acres located at the northwest corner of Shiloh Road and Renner Road in the City of Plano, to modify the development standards and definitions; as requested in Zoning Case 2010-15 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2010-10-24.

Nothing further was discussed and Mayor Dyer adjourned the meeting at 8:43 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		11/8/10			
Department:		Purchasing			
Department Head		Mike Ryan			
Agenda Coordinator (include phone #): Heather Parkerson x 7554					
CAPTION					
Bid No. 2010-211-C for a one (1) year contract with three (3) optional one year renewals for Security Personnel Services for Municipal Courts to Allegiance Security Group, LLC in the amount of \$57,048 and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11, 2011-12, 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	76,510	144,096	220,606
Encumbered/Expended Amount		0	0	0	0
This Item		0	-57,048	-144,096	-201,144
BALANCE		0	19,462	0	19,462
FUND(S): MUNICIPAL COURT BUILDING SECURITY FEE					
<p>COMMENTS: This item approves price quotes. Expenditures will be made in the Municipal Court Building Security Fee fund based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2010-11 is \$57,048. The estimated future annual amount is \$144,096, which will be made within approved budget appropriations.</p> <p>STRATEGIC PLAN GOAL: The contracting of security guards for the Municipal Court relates to the City's goal of "Safe Large City."</p>					
SUMMARY OF ITEM					
Staff recommends the Competitive Sealed Bid of Allegiance Security Group, LLC, in the amount of \$57,048 be accepted as the lowest responsive responsible bidder, and conditioned upon timely execution of any necessary contract documents. This will establish a one year contract with three optional one year renewals.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memorandum					
Bid Recap					



MUNICIPAL JUDGE

To: Heather Parkerson

From: Don Stevenson

Date: September 28, 2010

**Re: Recommendation of Award
Bid No. 2010-211-C**

The Municipal Court Judge's office recommends that a contract for Security Personnel Services for the Municipal Court be awarded to Allegiance Security Group, LLC., hereinafter referred to as "Allegiance."

This recommendation is made after evaluation of the bids received based on the LOWEST RESPONSIVE, RESPONSIBLE BIDDER.

Allegiance submitted a monetary bid of \$57,047.64 that was the lowest bid received. Allegiance has experience in providing security services to federal, county and local governments.

Based on the above-described lowest price, qualifications and experience, we recommend that the contract for security personnel be awarded to Allegiance Security Group, LLC.



Bid No. 2010-211-C

SECURITY PERSONNEL SERVICES

RECAP

Bid Opening Date/Time: Thursday, September 16, 2010 at 3:00 pm

Number of Vendors Notified: 2354

Vendors Submitting "No Bids": 0

Number of Proposals Submitted: 11

<u>Responses Received:</u>	<u>Total Estimated Annual Expenditure</u>
Allegiance Security Group, LLC	\$57,047.64
Winnitram Security	\$59,267.00
Force One Security Solutions, Inc.	\$67,085.20
Vets Securing America	\$67,135.64
Texas Industrial Security, Inc.	\$68,699.28
Ruiz Protective Services, Inc.	\$68,850.60
First Response Security	\$72,129.20
Texas Star 1 USA	\$72,255.30
Priority Asset Protection, Inc.	\$75,861.76
DFW Security Protective Force	\$81,410.16
RMI International, Inc.	\$97,424.86

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor:

Allegiance Security Group, LLC is the recommended vendor for this award with a total estimated annual expenditure of **\$57,047.64**.

I certify that the above includes all firms contacted to bid and that replies are exactly as stated.

Heather Parkerson

Heather Parkerson, Buyer

September 17, 2010

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/8/2010		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Dianna Wike X5512				
CAPTION				
Bid No. 2010-247-B, for Plano Senior Center Roof Replacement, to Tice Enterprises, Ltd., in the amount of \$131,988, and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	6,228	293,772	0	300,000
Encumbered/Expended Amount	-6,228	0	0	-6,228
This Item	0	-131,988	0	-131,988
BALANCE	0	161,784	0	161,784
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2010-11 Capital Reserve. This item, in the amount of \$131,988, will leave a current year balance of \$161,784 for the Senior Center project. STRATEGIC PLAN GOAL: Roof replacement purchases relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends bid of Tice Enterprises, Ltd., in the amount of \$131,988, be accepted as the lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This is for Plano Senior Center Roof Replacement.				
List of Supporting Documents: Memorandum Bid Recap			Other Departments, Boards, Commissions or Agencies	



Phil Dyer
Mayor

Lee Dunlap
Mayor Pro Tem

Pat Miner
Deputy Mayor Pro Tem

Ben Harris
Place 2

André Davidson
Place 3

Lissa Smith
Place 4

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

TO: Dianne Wike, Sr. Buyer

FROM: Richard Medlen
Facilities Maintenance Superintendent 

DATE: October 21, 2010

SUBJECT: **2010-247-B Plano Senior Center Roof Replacements**

I have reviewed the bids submitted to replace the deteriorated roof at the Plano Senior Center roof replacement. The review and analysis results of the bid indicates that ACA Painting and Construction, LLC did not provide a bid bond and did not attend a mandatory site visit and is, therefore, deemed non-responsive to the specifications. According to the manufacturer, Saratoga Roofing & Construction, and Carlo Enterprises, Inc. are not licensed by the manufacturer as specified in the bid documents and are, therefore, deemed non-responsive to the specifications. Benco Construction Services, Inc. did not attend a mandatory site visit and did not provide a bid bond as required by the specification and is, therefore, deemed non-responsive to the specifications. Green Roofing and Construction did not provide a bid bond as required by the specifications and is, therefore, deemed non-responsive to the specifications. R & B Roofing, LLC submitted a bid with an alternative product and did not follow the substitution request procedures and is, therefore, deemed non-responsive to the specifications.

It has been verified that the bid submitted by Tice Enterprises, LTD meets specifications in the amount of \$131,988, therefore, providing the lowest responsive responsible bid, and is recommended to be awarded the bid.

The amount bid is within the established budget for the project and funding is in the Capital Reserve Fund account number 54482.

Please let me know if you have any questions.

/rmt

Cc: Jim Razinha
Paul Glenn
Melody Morgan
Bob Kolodziej

CITY OF PLANO

Bid NO. 2010-247-B PLANO SENIOR CENTER ROOF REPLACEMENT BID RECAP

Bid opening Date/Time: October 13, 2010 @ 3:00pm

Number of Vendors Notified: 297

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 8

ACA Painting and Construction, LLC	\$ 49,840
Saratoga Roofing & Construction	\$ 85,490
Carlo Enterprises, Inc.	\$106,300
Benco Construction Services, Inc.	\$108,300
Green Roofing and Construction	\$110,970
R&B Roofing, LLC	\$116,300
Tice Enterprises, Ltd.	\$131,988
LDM Design and Construction	\$134,280

Bids Evaluated Non-Responsive to Specifications: 6

- ACA Painting and Construction, LLC did not provide a bid bond and did not attend a mandatory site visit,
- Saratoga Roofing & Construction is not licensed by the manufacturer as specified in the bid.
- Carlo Enterprises, Inc. is not licensed by the manufacturer as specified in the bid.
- Benco Construction Services, Inc. did not attend a mandatory site visit and did not provide a bid bond.
- Green Roofing and Construction, did not provide a bid bond.
- R&B Roofing, LLC submitted a bid with an alternative product and did not follow the substitution request procedures.

Recommended Vendor(s):

Tice Enterprises, Ltd. \$131,988.00

Dianna Wike

October 20, 2010

Dianna Wike, Buyer Supervisor

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/08/10		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Bev Rogers ext. 7376				
CAPTION				
RFQ No. 2010-138-B for a one (1) year contract with six (6) optional one year renewals for the purchase of Advertising Agency services for the Plano Convention and Visitors Bureau toThe Atkins Group in the amount of \$457,666 and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 10/11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	584,089	0	584,089
Encumbered/Expended Amount	0	-95,978	0	-95,978
This Item	0	-457,666	0	-457,666
BALANCE	0	30,445	0	30,445
FUND(S): CONVENTION & TOURISM FUND				
<p>COMMENTS: Funds are available to enter into an agreement with The Atkins Group to provide for advertising promoting tourism to Plano. In addition to agency fees The Atkins Group, with approval from the Plano Convention & Visitors Bureau, will assume responsibility for placing advertisements in a variety of media venues with the CVB's current advertising budget.</p> <p>STRATEGIC PLAN GOAL: Partnering with an established Advertising Agency to maximize the reach of marketing for Plano destinations relates to the City's goal of a "Financially Strong City with Service Excellence" and a "Strong Local Economy."</p>				
SUMMARY OF ITEM				
The Plano Convention and Visitors Bureau staff recommends the purchase of Advertising Agency service from The Atkins Group in the estimated annual amount of \$457,666.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memorandum				
RFQ Recap				
Contract				



PLANO

convention & visitors bureau

MEMORANDUM

Date: October 18, 2010
To: Bev Rogers, Purchasing Department
From: Mark Thompson, Manager Plano CVB
Subject: Award Recommendation Advertising Agreement for CVB

It is the recommendation of the Convention and Visitors Bureau to award the new **2010-11 Advertising Agency Agreement** to *The Atkins Group*. *The Atkins Group* has gone through the RFQ process with the CVB and after being reviewed by both staff and members of the hospitality industry, it was unanimously decided that they out of those responding to the RFQ, would be the best fit for the Plano CVB. Their hospitality background, understanding of the tourism industry and creativity made them stand head and shoulders above the other candidates responding to the RFQ.

As shown in the RFQ re-cap, *The Atkins Group* received the highest marks in all categories. Total annual amount awarded for this agreement is \$457,666, which includes agency fees and media placements in the various media venues including, print, radio, TV, outdoor, and online.

Please review and begin the necessary steps to award this contract to *The Atkins Group*.

Attachments:
RFQ Recap

CITY OF PLANO

RFQ NO. 2010-138-B FOR ADVERTISING AGENCY (CVB) RFQ RECAP

RFQ opening Date/Time: June 15, 2010 @ 3:00 PM

Number of Vendors Notified: 2,127

Vendors Submitting "No Bids": 0

Number of Proposals Submitted: 11

<u>Number of Short List Participants:</u>	<u>Total Weighted Score</u>
Atkins International LLC dba The Atkins Group	4.80
Numantra LP	3.58
PGC Creative	2.80
Allyn Media, LLC	2.63
Z Group Communications, Inc.	2.42

Proposals Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Atkins International LLC dba The Atkins Group

Bev Rogers

June 15, 2010

Bev Rogers, Buyer

Date



501 Soledad
San Antonio Texas 78205
P 210.444.2500 F 210.TAG.TEAM

www.theatkinsgroup.com

Letter of Agreement
Between
Plano Convention & Visitors Bureau
and
The Atkins Group

The Atkins Group (referred to as "we") hereby agrees to serve as marketing communications agency for the Plano Convention and Visitors Bureau (referred to as "you" or "the Client") in accordance with and subject to the following terms:

1. During the term of this agreement we shall be the primary company charged with the responsibility of preparing and placing advertising/marketing communications for the Plano Convention and Visitors Bureau with the only exception being direct placement by the Client. Client agrees to forward copies of such to the Agency for integrated record keeping.
2. We shall perform the following services in connection with the planning, preparing and placing of advertising/community outreach/promotions and other marketing communications:
 - a. Study your products or services;
 - b. Analyze your current and potential markets and targets;
 - c. Create, prepare and submit to you for your approval, a strategic marketing program, including advertising, community relations and other communication products;
 - d. Employ on your behalf, our knowledge of available media and means that can be effectively used to advertise your products or services;
 - e. Prepare and submit to you for advance approval, estimates of costs for the recommended advertising/community outreach programs;
 - f. Write, design, illustrate or otherwise prepare your advertisements, including commercials to be broadcast, or other appropriate forms of your message;
 - g. Order the space, time or other means to be used for your advertisements, endeavoring to secure the most advantageous rates available;
 - h. Properly incorporate the message in mechanical or other form and forward it with proper instructions for the fulfillment of the order;

3. The basis of our compensation will be as follows:

- 1) We will provide the stewardship of this account for a fee of \$3,500 per month. This fee will provide a base of 30 hours of account leadership, supervision and day to day management by Steve Atkins, Jayme LeGros and Gabriella Flores, and includes time consumed for regularly scheduled meetings and phone conferences to manage the implementation of the marketing communications plan. Any account service hours utilized beyond the 30 hours of account service stipulated in the monthly account service fee will be billed at our normal hourly rates and submitted in the form of a written estimate prior to services being rendered. Travel necessary for in person client meetings will be billed in accordance with the terms in Paragraph 3(6).
- 2) Monthly billing, outside of account service, will reflect hours utilized based on the scope of work as determined with the client. All time related to creating and producing your communication materials is estimated and billed at the following rates:
 - a) Strategic Planning
 - i) Steve Atkins, Principal - \$225 per hour
 - b) Account Supervision
 - i) Steve Atkins, Principal - \$195 per hour
 - ii) Terri Angelico, Senior Account Supervisor - \$150 per hour
 - c) Account Executive
 - i) Jayme LeGros, Account Manager - \$150 per hour
 - ii) Gabriella Flores, Senior Account Coordinator - \$125 per hour
 - d) Concept/Design
 - i) Dirk Mitchell, Creative Director - \$185 per hour
 - ii) James Howe, Creative Director - \$185 per hour
 - e) Copywriting
 - i) Dirk Mitchell, Creative Director - \$165 per hour
 - f) Senior Art Director
 - i) James Howe, Art Director - \$165 per hour
 - g) Production Art, Traffic, Account Coordination - \$95 per hour
 - i) Steve Young, Production Artist
 - ii) Kay Rangel, Traffic Manager
 - h) Media Planning & Buying
 - i) Ann Perrine, Media Director, Planning - \$165 per hour
 - ii) Ann Perrine, Media Director, Buying - \$150 per hour
 - iii) Sandie Smith, Billing Manager, Post Buy/Billing Stewardship - \$125 per hour

- 3) On all media purchased by us on your behalf, we shall bill you at the net published card rates after negotiation. Hourly billings cover the cost of media planning and placement, media trafficking, all administrative and accounting functions for the original media estimate and one (1) revision to that order. Additional revisions will be done upon approval of a change order to compensate for additional hours needed to make changes/cancellations to the original approved estimate.
- 4) TAG will present cost estimates for projects over \$1,500 for the Client's review and approval prior to beginning work on individual projects. These estimates detail all production costs and reflect a plus or minus 10% contingency factor in addition to any specifically stated contingency. If changes and/or additional unforeseen services/costs are necessary to complete a job, a change order will be issued to Client for review and approval.
- 5) Our monthly billing terms are Net 30 Days. Reference Government Code Title 10, Subtitle F, Chapter 2251, Section 025.
- 6) TAG will submit travel dates and obtain prior written permission from Client for any travel expenses to be billed that are not included in the \$3,500 monthly fee. Travel Expenses and Per Diem for out of town travel will be calculated as follows:
 - a) Transportation – every effort will be made to secure the most time and cost efficient mode of travel. We will purchase airfare at the lowest fare available and within the planning timetable. If schedule changes are required by client, any adjustment to the fare will be added. If travel is cancelled and we are able to reuse funds on a previously purchased ticket at no cost, that cost will be credited to the client. If it is a non-refundable ticket, the client will be billed for the fare and/or any change fees that may apply. Airfare will be billed to the client at net cost with no markup.
 - b) Ground Transportation – during out of town travel \$75 per day will be assessed for ground transportation. This rate covers fuel, parking and maintenance of the Company vehicle. If a specialty vehicle is needed, or our Company vehicle is not available, actual rental car receipts will be provided along with parking and fuel receipts.
 - c) Lodging – during out of town travel every effort will be made to secure the lowest rate possible for comfortable and secure lodging, including utilizing an available corporate rate established by the client when available. Actual receipts will accompany billing.
 - d) Meals – during out of town travel a per diem rate of \$65 per day will be charged for meals and any incidentals. For billing purposes, a day consists of time away from our corporate office during regular business hours. This will be charged in conjunction with travel and does not necessarily require an overnight stay.

4. All purchases of space and facilities and all engagement of talent with respect to the advertising of your products shall be subject to prior approval. If you should direct us to cancel and/or terminate any previously authorized purchase or project, we shall promptly take all appropriate action, provided that you will hold us harmless with respect to any costs incurred to us as a result thereof. We warrant and represent to you that in purchasing any materials or services for your account, we shall exercise due care in selecting suppliers and make every effort to obtain the lowest price for the desired quality of materials or services. Wherever possible, we shall obtain competitive bids.

5. The term of this agreement shall commence on October 1, 2010 for a period of one year and may be renewed annually thereafter for six additional one year periods. Client will provide written notice of intent to renew at least 60 days prior to the end of each renewal period. This agreement may be terminated by either party at any time upon written notice of such intention given ninety (90) days in advance. Notices shall be deemed given on the day of mailing or in case of notice by fax, on the day it is transmitted. The rights, duties and responsibilities of this agency shall continue in full force during the period of notice, including the ordering and billing of advertising in print media whose closing dates fall within such period and the ordering and billing of advertising in broadcast media where the air dates fall within such period.

6. Any advertising, merchandising, packaging and similar plans and ideas prepared by us and submitted to you (whether submitted separately or in conjunction with or as part of other material) but not used by you, shall remain your property provided that we are compensated for its development. You agree to return to us any copy, art work, plates or any other physical embodiment of the creative work relating to such ideas or plans, (which may be in your possession upon termination) that have not been paid for at that time.

7. Upon termination of this contract, we shall transfer, assign and make available to you, or your representative, all property and materials in our possession or control belonging to and paid for by you. Furthermore, you recognize that talent contracts with members of certain labor unions or guilds generally cannot be assigned except to signatories to the collective bargaining agreements governing the services rendered by such talent. Upon termination, no rights or liabilities shall arise out of this relationship, regardless of any plans which may have been made for future advertising, except that any non-cancelable contracts made on your authorization and still existing at termination hereof, which contracts were not paid or could not be assigned by us to you or someone designated by you, shall be carried to completion by us and paid for by you in the manner described in Paragraph (3) above.

8. The parties shall each be responsible for their own acts and omissions in the performance of their duties hereunder and the acts and omissions of their own agents and employees.

9. If agreed, each party shall maintain general liability insurance, including "personal and advertising injury" with minimum limits of \$1,000,000 per occurrence, \$2,000,000

annual aggregate, during the term of this agreement.

10. All notices given under this agreement will be sent by certified mail to the following:

As to: Plano Convention & Visitors Bureau
Mark Thompson, Director
2000 East Spring Creek Parkway
Plano, TX 75074
972-941-5844
FAX: 972-424-0002

As to: The Atkins Group
Steve Atkins, President
501 Soledad Street
San Antonio, TX 78205
210-444-2500
FAX: 210-824-8326

11. The Atkins Group is an independent contractor. Nothing in this agreement is intended, nor should be construed to create a relationship of principal and agent, joint venture, partnership, or any relationship other than that of independent contractors, contracting with each other solely with respect to the performance of those services which are the subject matter of this agreement.

12. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. The parties agree that this Agreement and its attachments constitute the entire understanding of the parties. In the event of conflict between the Agreement and Proposal, the Agreement shall control.

13. CLIENT and TAG each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CLIENT nor TAG will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CLIENT. Subject to the provision regarding assignment, this Agreement shall be binding on the administrators, legal representatives, successors, and assigns of the respective parties.

14. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas. The parties agree that it is performable in Collin and Denton County, Texas and that exclusive venue shall be in Collin County, Texas.

15. This Agreement is entered into subject to the charter and ordinances of CLIENT as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws. TAG shall make any and all reports required in accordance with federal, state or local law, including but not limited to proper reporting to the Internal Revenue Service as required in accordance with TAG's income.

16. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this Agreement shall

be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

17. TAG acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interest and that the existence of a prohibited interest at any time will render the Agreement voidable. At the time of executing this Agreement, a representative of TAG will execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "B".

18. TAG understands spending within this contract is not to exceed \$457,666.

The undersigned representatives approve the contents of this contract and agree to abide by its terms.



The Atkins Group
Steve Atkins, President

09/27/2010

Date

City of Plano
Tom Muehlenbeck, City Manager

Date

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of The Atkins Group and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of The Atkins Group is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

The Atkins Group
Name of Contractor
By: 
Signature

Steve Atkins
Print Name

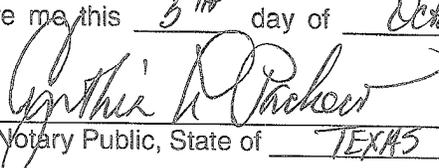
President
Title

10/5/10
Date

STATE OF TEXAS §
COUNTY OF BEXAR §

SUBSCRIBED AND SWORN TO before me this 5TH day of October, 2010.

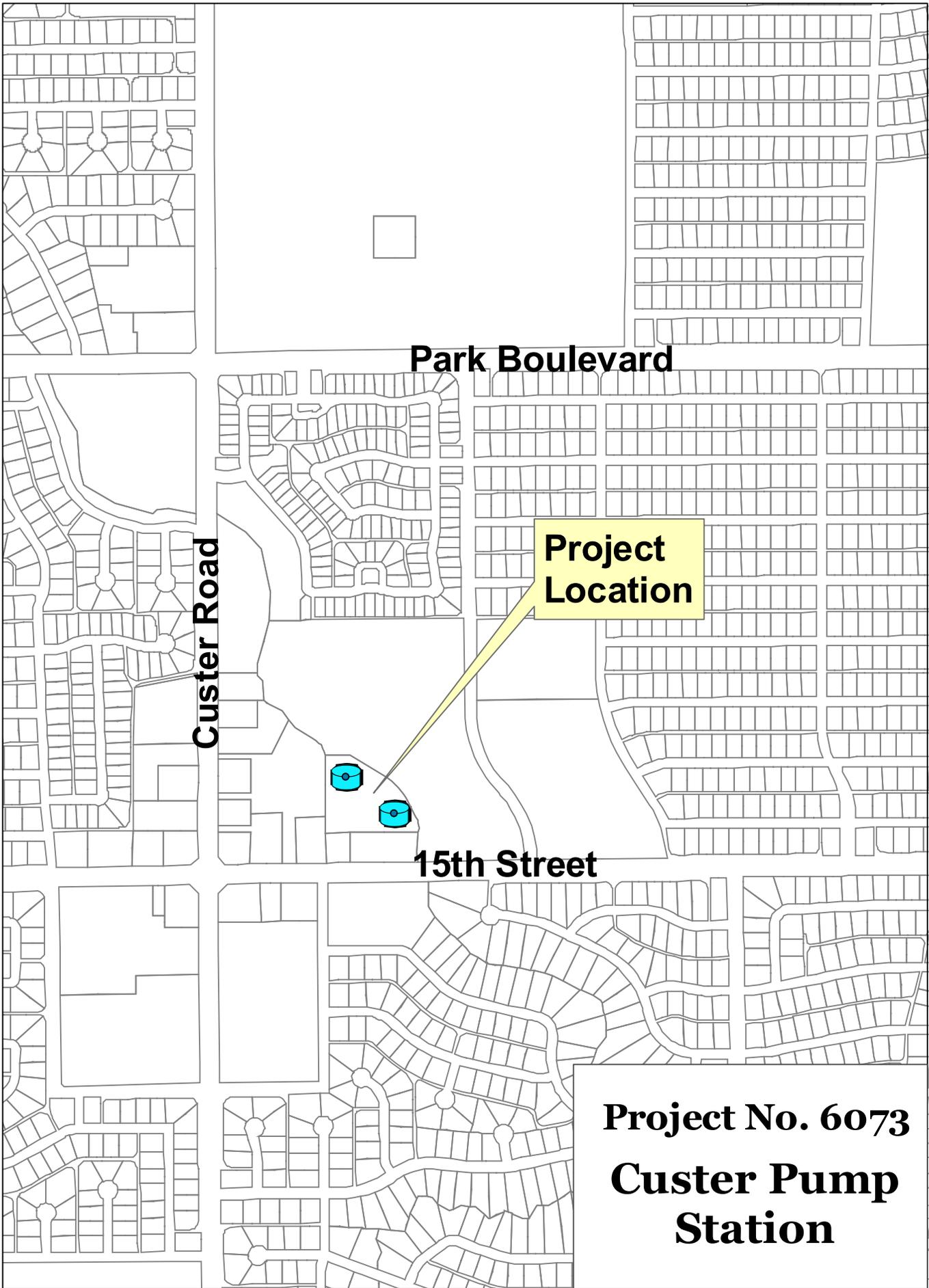



Notary Public, State of TEXAS



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/8/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 6073
CAPTION				
Approval of an Engineering Services Contract by and between the City and Birkhoff, Hendricks & Carter, L.L.P., in the amount of \$359,100, for Custer Pump Station, and authorizing the City Manager or his authorized donee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	360,000	3,600,000	3,960,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-359,100	0	-359,100
BALANCE	0	900	3,600,000	3,600,900
FUND(S): WATER CIP				
COMMENTS: Funds are included in the 2010-11 Water CIP. This item, in the amount of \$359,100, will leave a current year balance of \$900 for the Custer Pump Station project. STRATEGIC PLAN GOAL: Engineering services for pump station improvements relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This agreement with Birkhoff, Hendricks & Carter, L.L.P., is for engineering design for the rehabilitation of the Custer Pump Station to include the replacement of pumps, motors, electrical motor control center, instrumentation and other improvements. The contract fee is not to exceed \$359,100, and is detailed as follows:				
Design and Bidding Documents	\$280,000			
Bidding	3,000			
Construction	10,000			
Additional Services	<u>66,100</u>			
TOTAL	\$359,100			
Funding is available from the Water Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$3,500,000.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map, Engineering Services Agreement		N/A		



Park Boulevard

Custer Road

Project Location

15th Street

**Project No. 6073
Custer Pump
Station**

CUSTER PUMP STATION

PROJECT NO. 6073

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS LIMITED LIABILITY PARTNERSHIP**, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **CUSTER PUMP STATION** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY

ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing

herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works & Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Avenue, Suite 600
Dallas, Texas 75243
Attn: John Birkhoff, P.E., Managing Partner

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

**BIRKHOFF, HENDRICKS & CARTER,
L.L.P.**
A Texas Limited Liability Partnership

DATE: _____

BY: _____
John Birkhoff, P.E.
MANAGING PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **JOHN BIRKHOFF, P.E., MANAGING PARTNER of BIRKHOFF, HENDRICKS & CARTER, L.L.P., a TEXAS LIMITED LIABILITY PARTNERSHIP**, on behalf of said partnership.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **THOMAS H. MUEHLENBECK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT “A”

SCOPE OF SERVICES

Part I. DESCRIPTION

This project will renovate the Custer Pump Station including replacement of the pumps, motors, piping, electrical motor control center, instrumentation and other improvements.

Design Standards

- A. This project shall be designed in accordance with the following:
- Geodetic Monumentation Manual
 - Manual for Right-of-way Management
 - Storm Drainage Design Manual
 - Stream Bank Stabilization Manual
 - Erosion & Sediment Control Manual
 - Thoroughfare Standards Rules & Regulations
 - Manual for the Design of Water & Sanitary Sewer Lines
 - Standard Construction Details
 - Barrier Free Ramp Details
 - NCTCOG Standard Specifications for Public Works Construction
 - Special Provisions to Standard Specifications for Public Works Construction
- B. All plans submitted to the City shall be signed and sealed in accordance with state law.

Part II. PRELIMINARY ENGINEERING

- A. Hydraulic Model
1. Run the City’s water distribution hydraulic model to establish new system curve for Custer Pump Station to size pumps.

2. Scenario will add additional flow to 795 Service Area, decreasing flow to 875 Service Area and reduce flow through existing Pressure Reducing Valve (PRV) between 875 and 795 Service Area.
3. Determine if 795 Pipe network and discharge header can handle increased flow at Custer Pump Station and Stadium Pump Station.

B. Prepare Preliminary Construction Plans to include the Following:

1. Remove interior walls of station to allow for expansion of Electrical Room. Center wall to Valve Room will remain. See attached preliminary floor plan. Add block wall to roof pans between electrical room and future chemical room.
2. Remove front windows; minimize size of back windows with security glass.
3. Relocate Mechanical Room and Restroom.
4. Eliminate Locker Room, Office, Storage Room and Kitchen.
5. Remove stone front glass at entry, eliminate windows in south wall, and eliminate exterior doors to old Calgon and Chlorine Room. Create new entry location. Include rollup door in wall replacing glass store front.
6. Paint texture coating on exterior of building above brick to match color on ground storage. Remove vines attached to interface of texture and brick prior to painting.
7. Replace remaining exterior doors with fiberglass doors and frames. Include new fiberglass door and frame entry door.
8. Remove concrete sidewalk and replace with new sidewalk to new station entry. Add drive way to rollup door (existing store front) for future chemical room.
9. Continue concrete driveway around building to access pump and motor deck. No curbs. Grade east side of building from previous excavation.

10. Provide new HVAC system in new floor layout. HVAC units to be roof mounted.
11. Provide for tankless electric hot water heater.
12. Level-up floor from wall removal and place vinyl tile on floor.
13. Remove all ceiling tiles and grid network within building.
14. Paint all walls and exposed concrete (ceiling area) in station.
15. Add center rail and kick-panel to existing handrails.
16. Replace removable steel grating in valve room (floor level) with removable aluminum grating, locate access points in grating and add two vertical ladders and handles above grating.
17. Remove abandoned pressure sensing lines and waterlines located in the discharge pipe pit.
18. Replace "L" support bracket to grating support system along north wall.
19. Lower Levels: Add a concrete material to buildup floor and grade to drain floor to sump.
20. Lowest Level: Replace stairway ladder.
21. Add lighting to lowest levels.
22. Place electrical receptacles to 4-feet above floor level in valve and piping rooms and pits.
23. Seal exterior pump deck.
24. Replace piping from suction header to discharge header. Replace 795 discharge header if required from computer modeling.
25. Replace valves between suction header and discharge header.
26. Replace and size surge valves for each service area.

27. Size pumps and motors based on new system curve and findings from water modeling.
28. Analyze the existing structure to determine if a 2 Ton bridge crane can be incorporated into valve room.
29. If structure can support bridge crane, design its layout. This will be manual bridge crane.
30. Remove and dispose of equipment and panels, and the alike from the site.
31. Existing motor control centers and electrical switchgear will be removed and replaced.
32. Interior lighting will be rerouted to fit new floor layout.
33. Discharge metering will be replaced. Venturi tubes removed, spool sections used to fill voids.
34. Replace single sump pump with dual alternating sump pump with floor alarm. Alarm to be tied to SCADA.
35. Site lighting will be added. Proposed lighting to utilize LED as the light source. Existing exterior lighting will be removed.
36. Plumbing will be rerouted in crawl space to allow relocation of toilet, sinks, and water-heater.
37. Include photographs of existing station in specification book.
38. By relocating new electrical room, station could be maintained in operation during construction. One pump and motor can be transferred from existing MCC to proposed MCC. At completion of transfer remove existing MCC panels.
39. Cut into supply line outside NTMWD meter station supply line, add two isolation butterfly valves.
40. Include new fencing at site with manual open gates.

41. Include provisions to clean and disinfect ground storage reservoirs.

42. Prepare Technical Specifications for the above-described work to the station.

Part III. FINAL DESIGN

A. Revise preliminary plans incorporating comments from the City of Plano.

B. Finalize sections and piping plan.

C. Prepare Proposal & Bid Schedule for project. Proposal & Bid Schedule will be for major components of the plant and installation, including the following:

1. Pumps and Motors
2. Building Improvements
3. Electrical
4. Site Work
5. Valves
6. Piping
7. Painting

D. Finalize specifications and bidding documents.

E. Complete quantity take-off and prepare opinion of probable construction cost based on final plans.

F. Prepare final bid documents including bid proposal forms, construction plans, specifications, and contract documents.

G. Submit with monthly pay requests, a monthly report of progress completed on the project.

Part IV. BIDDING PHASE

- A. Assist the City staff in advertising for bids. This will include e-mailing “Notice to Contractors” to contractors experienced in this type of construction. City will have Notice published in local newspaper.
- B. Sell bidding documents to potential bidders and their suppliers and other parties.
- C. Provide bidding documents to the City.
- D. Conduct a pre-bid conference at City facilities.
- E. Assist during opening of bids and provide bidding tally sheets.
- F. Provide bid tabulation to City and contractors who submitted bids.
- G. Obtain the following information from the lowest bidder:
 - 1. Past work history.
 - 2. Physical resources to produce the projectFormulate opinion from information received and provide the City a recommendation for award of the construction contract.
- H. After award of contract, furnish thirteen sets of prints of the final plans, specifications and contract documents to the City for construction use by the City and contractor.
- I. Submit a CD-ROM disk of the bid set plans in a PDF format to the City.

Part V. CONSTRUCTION PHASE

- A. Conduct pre-construction conference, including preparing an agenda.
- B. Attend coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination once a month during seven to nine month onsite construction.

- C. Review shop drawings and other submittal information which the contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review by the Engineer does not relieve the contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents.
- D. Shop drawings for which no exceptions are taken, two copies will be provided to City's project manager for use during construction.
- E. Provide written responses to requests for information or clarification to City or contractor.

Part VI. ADDITIONAL SERVICES

A. Survey for Design

Horizontal and vertical location of the existing facilities, including existing site plan, and interior piping.

B. Prepare Record Drawings

Prepare record drawings based on contractor mark-ups and submit one full-size black-line set to the Construction Inspector for review. Upon review and approval, submit one full-size black-line set and one CD-ROM disk containing scanned images 11" x 17" final "as-built" black-line drawings (with "as-built" stamps bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

C. Reproduction

Cost to reproduce preliminary and final documents, along with copies of documents for construction use.

1. Design the replacement of two 450-kw generator sets with one 1,000-kw generator set. Design will include integration of 1,000-kw generator with proposed switchgear and preparing distributed Generation Permit with Oncor.
2. Provide electrical on-site observation during the electrical installation. This will consist of random visits during this phase of the work with observer spending 1 to 4-hours on-site per visit. Visits are limited to fifteen (15) visits.
3. Design of a portable starter system. The starter assembly will be 480-volt and support three 450-HP Motors and three 250-HP Motors. Design will utilize the existing starters at Custer Pump Station.

Part VII. EXCLUSIONS

Services specifically excluded from this scope include, but are not necessarily limited to the following:

- A. Providing full-time on-site representative.
- B. Environmental impact statements and assessments.
- C. Fees for permits or advertising.
- D. Certification that work is in accordance with plans and specifications.
- E. Environmental cleanup.
- F. Landscape architecture.
- G. Flood plain reclamation plans.
- H. Title searches.
- I. Trench safety designs.
- J. Preliminary engineering report.
- K. Phasing of Contractors work.
- L. On-site safety precautions, programs and responsibility.
- M. Consulting services by others not included in proposal.
- N. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).

- O. Title searches, boundary surveys, or property surveys.
- P. Roof replacement.

Part VIII. CITY'S RESPONSIBILITY

- A. The City will provide information regarding objectives and requirements for the Project.
- B. The City will designate a single representative to act in its behalf, with respect to the project, who shall examine documents submitted by the Undersigned and, to the extent allowed by law, shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Undersigned's services.
- C. All of the City's plat, easement and construction plan files will be made available for use. City will provide copies at no cost.
- D. Access to Custer Pump Station site. If manhole lids are bolted down the Engineer will contact the City's Utility Operation Department and schedule a time when they can meet with the Engineer and remove the manhole lid.
- E. City's on-site representative's construction reports on a weekly basis.

EXHIBIT “B”

COMPLETION SCHEDULE

Notice to Proceed.....	November 10, 2010
Commence Field Surveys.....	November 11, 2010
Submit Preliminary Plans to City.....	February 18, 2011
Receive Comments Back from City.....	March 4, 2011
Complete Final Plans.....	April 22, 2011
Advertise Project.....	May 11, 2011
Open Bids.....	June 9, 2011
Award Contract.....	June 27, 2011
Notice to Proceed.....	July 2011
Shop Drawing Process/Order Equipment.....	July 2011-October 2011
On-Site Construction.....	October 2011- May 2012

EXHIBIT "C"

PAYMENT SCHEDULE

Payment for basic services shall be based on a lump sum amount as follows:

1. Preliminary Engineering	\$170,000
2. Final Engineering	\$110,000
3. Bidding Phase Services	\$3,000
4. Construction Administration	<u>\$10,000</u>
Basic Services:	\$293,000

5. Additional Services shall be salary cost times a multiplier of 2.35, expenses times a multiplier of 1.15, onsite electrical observer \$180.00 per hour, and mileage at 0.50¢ per mile. Computer Software license rental \$125/week or \$350/month, whichever is less.

A. Design Surveys	\$3,600
B. Record Drawing	\$1,000
C. Reproduction	\$1,000
D. Water Study	\$9,500
E. Electrical Part-Time On-Site Observer	\$11,000
F. 1,000-kw Generator Design	\$25,000
G. Portable Starter System Design	<u>\$15,000</u>
Additional Services:	\$66,100

Maximum Fee Not to Exceed: \$359,100.00

The maximum overall fee established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

EXHIBIT "D"
ENGINEERING
INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of _____ and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of _____ is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

“No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council.”

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

BIRKHOFF, HENDRICKS & CARTER, L.L.P.

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §

§

COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2010.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	11/08/2010
Department:	Public Works & Engineering
Department Head	Alan L. Upchurch
Agenda Coordinator (include phone #): Irene Pegues (X-7152) PROJ #5399-1	

CAPTION

Approving and authorizing reimbursement to Wolverine Equities Company 2000 Highway 190, L.P. for oversize participation for public improvements associated with the construction of Mapleshade Road from Ohio Drive to Coit Road, in the amount of \$53,357.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-2011	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	70,037	544,963	100,000	715,000
Encumbered/Expended Amount	-70,037	0	0	-70,037
This Item	0	-53,357	0	-53,357
BALANCE	0	491,606	100,000	591,606

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This item, in the amount of \$53,357, will leave a current year balance of \$491,606 for Streets Oversized Reimbursements.

STRATEGIC PLAN GOAL: Oversized participation for public improvements associated with construction relates to the City's Goal of Financially Strong City with Service Excellence.

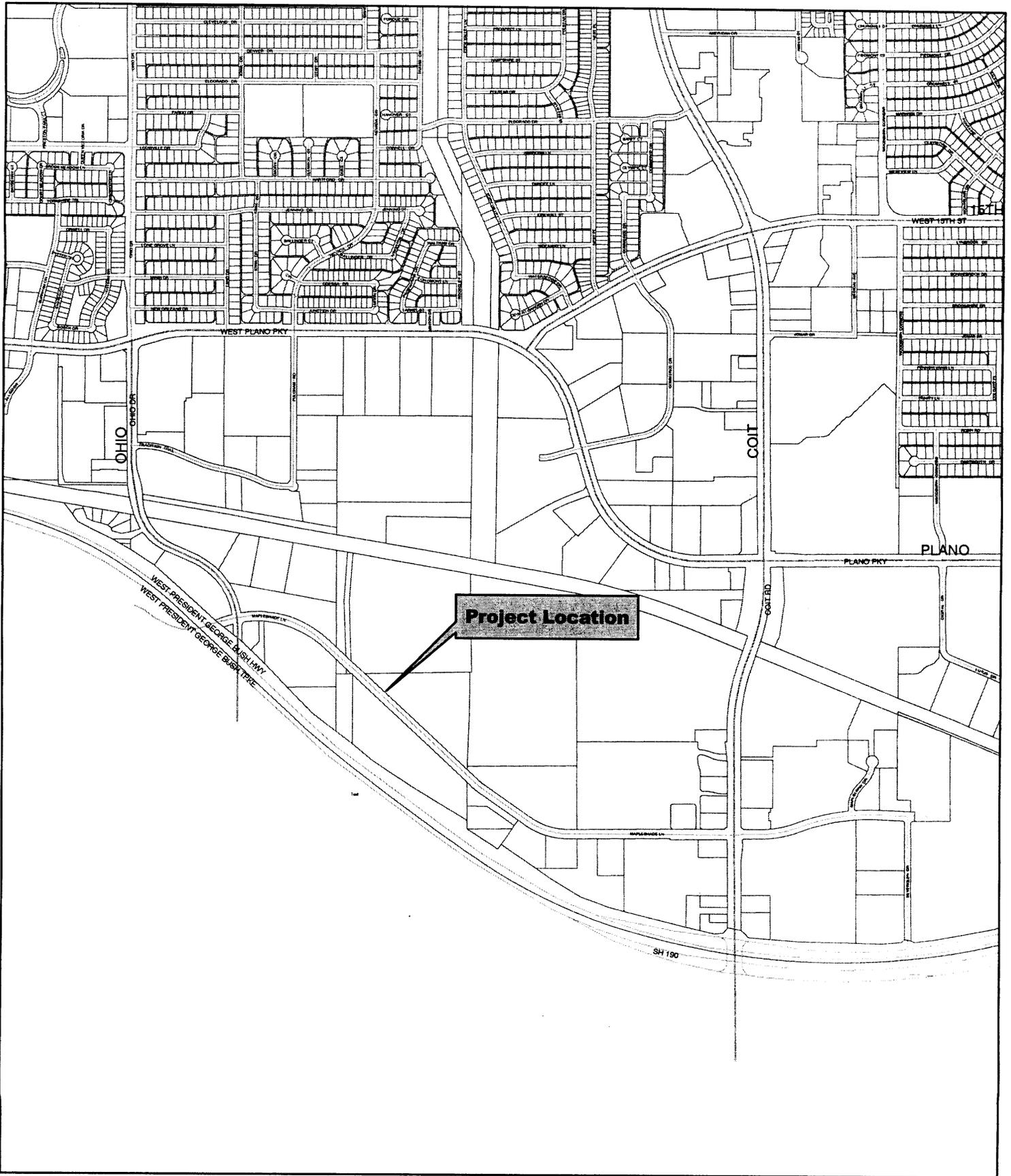
SUMMARY OF ITEM

In accordance with the Subdivision Ordinance and a Subdivision Improvement Agreement, reimbursement of \$53,356.87 to Wolverine Equities Company 2000 Highway 190, L.P. is due for oversize participation for public improvements associated with construction of Mapleshade Road from Ohio Drive to Coit Road. The construction was inspected and found to be in conformance with the executed Agreement.

Staff recommends the City Council authorize payment for the oversize participation.

List of Supporting Documents: Letter dated 9/26/05 from City Engineer Letter dated 9/27/10 from Engineering Manager Exhibits A & C Location Map	Other Departments, Boards, Commissions or Agencies N/A
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Mapleshade Rd. from Ohio Dr. to Coit Rd.



Location Map



September 26, 2005

St Evans
Mayor

Don Lambert
Mayor Pro Tem

Scott Johnson
Deputy Mayor Pro Tem

Rep Stahl
Place 1

Patricia Ellerbe
Place 3

Timmy Magnuson
Place 4

Harry LaRosiere
Place 5

Tom Callison
Place 7

Thomas H. Muehlenbeck
City Manager

The Holt Companies, Inc.
16250 Dallas Parkway, Suite 205
Dallas, Texas 75248

Re: Mapleshade Lane Connection - Project No. 5399

Gentlemen:

A final inspection of the water, paving, and drainage improvements, as shown on plans prepared by Winkelmann & Associates, has been made by the City of Plano. These improvements were found to be satisfactory and in accordance with the City of Plano specifications.

A Maintenance Bond has been received from Site Concrete, Inc. Therefore, the improvements noted above are accepted by the City of Plano subject to the one-year maintenance requirements.

Sincerely,

Alan Upchurch, P.E.
City Engineer

Is

cc: Building Inspection - Keith Schmidt, Anthony Han, Charles Hart,
Mamie Free, Cliff Bormann
Planning - Charles Alexander, Melody Spencer
Engineering - Warren Laney, Irene Pegues
Public Works - Dale Pettit
Utility Operations - David Ratcliff
Parks - Jim Fox
Verizon
Southwestern Bell (2 locations)
Winkelmann & Associates
Site Concrete, Inc.

MEMORANDUM

Date: September 27, 2010
To: Melody Morgan, CIP Budget Coordinator
From: Gerald P. Cosgrove, Engineering Manager
Subject: Mapleshade Road Extension – Ohio to Coit
Project No. 5399-1

It has been five years since the acceptance of the public improvements in subject addition. In accordance with our Subdivision Improvement Agreement dated October 28, 2004, the remaining oversize participation in the amount of \$53,356.87 is due to Wolverine Equities Company 2000 Highway 190, L.P.

Reimbursement Due	\$53,356.87
Prior Reimbursements	0
Total City Participation	<u>\$53,356.87</u>

GPC/eh

xc: Alan Upchurch
Ricky Lindley

EXHIBIT A
MAPLESHADE LANE CONNECTION
CITY OF PLANO PAVING COST PARTICIPATION
WOLVERINE EQUITIES COMPANY 2000 HIGHWAY 190, L.P.
AUGUST 2004

Item	Description	Quantity	Unit	Unit Prices	Amount
18	7" 4200 PSI Reinf. Conc. Pavement (13' wide section)	2140.20	SY	\$18.50	\$39,593.63
19	6" Lime Stabilized Subgrade (15' wide section)	2469.67	SY	\$1.55	\$3,827.98
20	Hydrated Lime (34 lbs/sy)	53.56	Ton	\$90.00	\$4,820.31
23	Street Header	14.07	LF	\$10.00	\$140.66
24	Sawcut & remove exist. Pavement, install butt joint	7.03	LF	\$4.00	\$28.13
25	Traffic control / Barricading (26%)	0.14	LS	\$3,000.00	\$421.98
26	4" Non-Reflective White Round Buttons	300.80	Ea	\$3.50	\$1,052.79
27	4"x4" Reflective Clear Square Buttons	75.20	Ea	\$6.00	\$451.19
	Sub-Total				\$50,336.67
	6% Engineering				\$3,020.20
	Total				\$53,356.87

Mapleshade Road Extension
Wolverine Equities Company 2000 Highway 190, L.P.
Portion of Contract
Exhibit "C"

QUANTITY	UNIT	ITEM	UNIT PRICE	TOTAL
GRADING				
1	6.49	Ac.	Clearing & Stripping	\$400.00 \$2,596.80
2	10431.56	C.Y.	Unclassified Street Excavation	\$5.10 \$53,200.97
3	91.97	C.Y.	Compacted Street Fill	\$2.00 \$183.94
4	0.54	L.S.	Tree Removal in R.O.W.	\$3,200.00 \$1,731.20
5	641.09	L.F.	Drainage Ditches	\$2.00 \$1,282.17
6	0.54	L.S.	Dispose of Trash and Brush	\$2,100.00 \$1,136.10
7	6.49	Ac.	Seeding and Fertilizer	\$1,000.00 \$6,492.00
8	1.08	Ea.	Stabilized Construction Entrance	\$1,950.00 \$2,109.90
9	1284.88	L.F.	Silt Fence	\$1.00 \$1,284.88
10	4.87	Ea.	Erosion Control Devices (inlets, headwall)	\$150.00 \$730.35
11	4.87	Ea.	Stone Overflow Structure	\$875.00 \$4,260.38
			Subtotal Grading	\$75,008.68
DEMOLITION				
12	97.38	S.Y.	Remove Existing Concrete Pavement	\$10.00 \$973.80
13	8.12	L.F.	Remove Existing 12" Water Line	\$15.00 \$121.73
14	70.33	L.F.	Remove Existing Fence in R.O.W.	\$2.00 \$140.66
15	27.05	L.F.	Remove Existing Street Barricade	\$3.00 \$81.15
16	0.54	Ea.	Remove Existing Headwall	\$400.00 \$216.40
17	0.54	Ea.	Adjust Existing 12" Valve	\$250.00 \$135.25
			Subtotal Erosion Control	\$1,668.99
PAVING				
18	8315.17	S.Y.	7" 4200 psi Reinforced Concrete / Curb	\$18.50 \$153,830.65
19	8831.83	S.Y.	6" 8% Lime Stabilization	\$1.55 \$13,689.33
20	153.64	Tons	Hydrated lime	\$90.00 \$13,827.96
21	0.54	Ea.	Median Nose with Brick Pavers	\$1,200.00 \$649.20
22	1.08	Ea.	Connect to Existing Pavement	\$1,200.00 \$1,298.40
23	83.31	L.F.	Street Header	\$10.00 \$833.14
24	75.74	L.F.	Full Depth Saw Cutting	\$4.00 \$302.96
25	0.54	L.S.	Traffic Control / Barricading	\$3,000.00 \$1,623.00
26	300.80	Ea.	4" Plain Non Reflective White md Buttons	\$3.50 \$1,052.79
27	75.20	Ea.	4"x4" Clear Reflective Acrylic Buttons	\$6.00 \$451.19
28	108.20	L.F.	Metal Beam Guard Fence	\$21.00 \$2,272.20
29	46.53	L.F.	Culver Rail SD-13	\$67.00 \$3,117.24
			Subtotal Paving	\$192,948.06
STORM DRAINAGE				
30	51.94	L.F.	18" RCP	\$28.00 \$1,454.21
31	308.91	L.F.	21" RCP	\$32.00 \$9,885.15
32	95.22	L.F.	27" RCP	\$42.00 \$3,999.07
33	239.12	L.F.	30" RCP	\$45.00 \$10,760.49
34	12.98	L.F.	36" RCP	\$57.00 \$740.09
35	207.20	L.F.	42" RCP	\$73.00 \$15,125.82
36	159.60	L.F.	48" RCP	\$90.00 \$14,363.55
37	23.26	L.F.	54" RCP	\$115.00 \$2,675.25
38	0.54	Ea.	Type "B" Headwall for 36" RCP	\$1,500.00 \$811.50
39	1.08	Ea.	Connect to Existing Headwall	\$750.00 \$811.50
40	0.54	Ea.	Connect to Existing Box Culvert	\$1,200.00 \$649.20
41	0.54	Ea.	Connect to Existing 36" RCP	\$500.00 \$270.50
42	1.08	Ea.	10' Recessed Curb Inlet	\$2,300.00 \$2,488.60
43	1.08	Ea.	12' Recessed Curb Inlet	\$2,400.00 \$2,596.80
44	1.08	Ea.	20" Recessed Curb Inlet	\$3,300.00 \$3,570.60
45	1.62	Ea.	5' x 5' Drop Inlet	\$2,000.00 \$3,246.00
46	9.20	C.Y.	Rock Rip Rap	\$145.00 \$1,333.57
47	7478.24	S.F.	High Velocity Curlex Blanket	\$0.30 \$2,243.47
			Subtotal Storm Sewer	\$77,025.36
WATER				
48	1529.95	L.F.	12" PVC	\$22.00 \$33,658.86
49	436.05	L.F.	8" PVC (DR-14)	\$16.00 \$6,976.74
50	51.40	L.F.	6" PVC (DR-14)	\$15.00 \$770.93
51	5.95	Ea.	12" Gate Valve	\$1,350.00 \$8,033.85
52	9.20	Ea.	8" Gate Valve	\$775.00 \$7,127.68
53	8.12	Ea.	6" Gate Valve	\$575.00 \$4,666.13
54	8.66	Ea.	Fire Hydrant w/ 6" Lead	\$1,800.00 \$15,580.80
55	1.08	Ea.	Connect to Existing 12" Water	\$550.00 \$595.10
56	0.54	Ea.	Connect to Existing 8" Water	\$350.00 \$189.35
57	2.27	TON	Fittings	\$3,000.00 \$6,816.60
58	1.08	Ea.	8" Cap and Blocking	\$2,000.00 \$2,164.00
59	5.41	L.F.	Concrete Encasement on 12" Water	\$30.00 \$162.30
60	1.62	Ea.	Connect to Existing Water	\$350.00 \$568.05
61	0.54	L.S.	Water Testing	\$1.00 \$0.54
			Subtotal Water	\$87,310.91
BONDS				
62	0.54	L.S.	Payment, Performance & Maintenance Bonds	\$16,000.00 \$8,656.00
			Subtotal Bonds	\$8,656.00
TOTAL CONSTRUCTION COST				\$442,617.99
ADDITION UNIT PRICES FOR AS NEEDED ITEMS:				
63	0	L.F.	16" Sleeves	\$ 12.00 \$ -
64	0	L.F.	4" Sleeves	\$ 10.00 \$ -
65	0	L.F.	2" Sleeves	\$ 8.00 \$ -
66	0	L.F.	3 Strand Barbed Wire Fence	\$ 3.00 \$ -
67	0	S.Y.	Turn Lane Conc.	\$ 26.50 \$ -
			Subtotal Miscellaneous	\$ -
			8% Contingencies	\$ -
			Total Miscellaneous Cost	\$ -
TOTAL				\$442,617.99

EXHIBIT "C"

FIELD NOTE DESCRIPTION
RIGHT-OF-WAY DEDICATION No. 2

STATE OF TEXAS
COLLIN COUNTY

BEING a tract of land situated in the MARTHA McBRIDE SURVEY, ABSTRACT No. 553, Collin County, Texas and being a portion of a tract of land described in a deed to WOLVERINE EQUITIES CO. 2000 HIGHWAY 190 LP as recorded in Volume 4880, Page 404 of the DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT); and being more particularly described as follows;

BEGINNING at the northwesterly corner of the said WOLVERINE EQUITIES CO. 2000 HIGHWAY 190 LP tract from which a 1/2 inch iron rod found bears South 59°13'09" East, a distance of 0.33 feet, said point also being the southwestery corner of NORTH DALLAS J.V, as recorded in Volume 2688, Page 354 of the DEED RECORDS OF COLLIN COUNTY, TEXAS (DRCCT);

THENCE, along the northerly line of said WOLVERINE EQUITIES CO. 2000 HIGHWAY 190 LP tract North 89°38'40" East, a distance of 131.93 feet to a 1/2 inch iron rod set with a red plastic cap stamped "W.A.I. for corner;

THENCE, departing the northerly line of said WOLVERINE EQUITIES CO. 2000 HIGHWAY 190 LP tract South 46°08'20" East, a distance of 1367.09 feet to a 1/2 inch iron rod set with a red plastic cap stamped "W.A.I." for corner;

THENCE, South 00°35'57" West, a distance of 126.33 feet to a 1/2 inch iron rod set with a red plastic cap stamped "W.A.I." for corner;

THENCE, North 46°08'20" West, a distance of 1548.23 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 3.079 acres or 134,100 square feet of land more or less. Bearings cited herein are based on City of Plano Geodetic No. H2 & G2.



B. J. Elam
10/26/04



**Winkelmann
& Associates, Inc.**

CONSULTING CIVIL ENGINEERS ■ SURVEYORS
(972) 490-7090 FAX (972) 490-7098

Scale : N.T.S.	Date : 9/13/04
Design : WAI	
Drawn : N.J.V.	
Dwg. File : 34601EH2.DWG	

MARTHA McBRIDE SURVEY
ABSTRACT No. 553
CITY OF PLANO

PROPOSED MAPLESHADE LANE
P.O.W. DEDICATION No. 2

SHEET
2
OF
7

TEXAS POWER & LIGHT COMPANY
VOL. 669, PG. 916
(DRCCT)

EXHIBIT "C"

NORTH DALLAS J.V.
VOLUME 2688, PAGE 354
(DRCCT)



Scale 1"=200'

P.O.B.

CITY OF PLANO
VOL. 3372, PG. 080
(DRCCT)

R.O.W. DEDICATION No 2
3.079 AC., 134,100 S.F.

TEXAS UTILITIES (DP&L)
VOL. 977, PG. 474
(DRCCT)

1/2" IRF
N 00°25'09" E 678.45'

WOLVERINE EQUITIES CO.
2000 HIGHWAY 190 LP
VOL. 4880, PG. 404
(DRCCT)

WOLVERINE EQUITIES CO.
2000 HIGHWAY 190 LP
VOL. 4880, PG. 404
(DRCCT)

WOLVERINE EQUITIES CO.
2000 HIGHWAY 190 LP
VOL. 4880, PG. 404
(DRCCT)

WOLVERINE EQUITIES CO.
2000 HIGHWAY 190 LP
VOL. 4880, PG. 404
(DRCCT)

UNIVERSITY BUSINESS
PARK PHASE II
CC# 97-0065617
(LRCCT)

PRESIDENT GEORGE BUSH TURNPIKE
STATE HIGHWAY NO. 190

R = 11223.46'
D = 03°49'20"
T = 374.49'
L = 748.71'
CH = 748.57'
CB = N 56°34'54" W

TANGENT	BEARING	LENGTH
T1	N 89°38'40" E	131.93'
T2	S 46°08'20" E	1367.09'
T3	S 00°35'57" W	126.33'
T4	N 46°08'20" W	1548.23'
T5	N 54°42'05" W	123.89'

W Winkelmann & Associates, Inc.
CONSULTING CIVIL ENGINEERS & SURVEYORS
(972) 490-7090 FAX (972) 490-7099

DALTEx COIT ROAD INC.
CC# 97-0065618
(LRCCT)

Scale : 1"=200'	Date : 9/13/04
Design : WAI	
Drawn : N.J.V.	
Dwg. File : 34601EH2.DWG	

MARTHA McBRIDE SURVEY
ABSTRACT No. 553
CITY OF PLANO
COLLIN COUNTY, TEXAS

PROPOSED MAPLESHADE LANE
R.O.W. DEDICATION No. 2

SHEET
1
OF



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	11/8/2010
Department:	Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

Approval of the purchase of replastering the Oak Point Center indoor pool in the amount of \$128,580 from Sunbelt Pools through an existing contract or agreement with BuyBoard and authorizing the City Manager to execute all necessary documents (BuyBoard Contract 288-08).

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	92,377	332,623	100,000	525,000
Encumbered/Expended Amount	-92,377	-9,892	0	-102,269
This Item	0	-128,580	0	-128,580
BALANCE	0	194,151	100,000	294,151

FUND(S): CAPITAL RESERVE FUND (035)

COMMENTS: Funds are included in the Parks CIP. This item, in the amount of \$128,580, will leave a current year balance of \$194,151 to be used towards pool equipment and repair projects.

STRATEGIC PLAN GOAL: Maintaining the integrity of pool facilities at Plano Recreation Centers relates to the City's goal of "Great Neighborhoods - 1st Choice to Live."

SUMMARY OF ITEM

Staff recommends approval of an expenditure to replaster the indoor pool at Oak Point Center from Sunbelt Pools in the amount of \$128,580. The existing plaster has started to fail in many locations. Once the plaster starts to fail, it will continue to get worse until it is replaced. Pricing was obtained through Buyboard Contract 288-08.

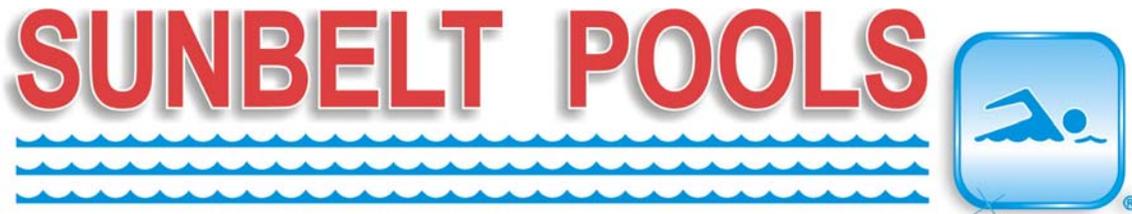
Sunbelt Pools has successfully completed several pool repair projects for the City in the past.

The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (Buyboard Contract 288-08).



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Quote	Other Departments, Boards, Commissions or Agencies



April 20, 2010

Aquatics Division – Oak Point Center
Parks and Recreation Department
City of Plano

**BUY BOARD CONTRACT: 288-08 Water Treatment Supplies & Equipment
Item #16, All other Swimming Pool Products**

Indoor Lap Pool

Pool Resurfacing: Proposal is for resurfacing the lap area of the pool that has not already been resurfaced. Saw cut beneath all the water line and use a cold chisel to remove three to four inches of plaster beneath the tile. Use a sledge hammer to “sound out” the existing plaster to determine if it is well bonded to the pool structure (which a signification portion is not). Remove all loose plaster. Chisel and remove three to four inches of plaster away from and around the perimeter of each pool return, main drain, anchor, light and, or any other structural embed. Saw cut around the perimeter of tiled lap lane floor tile and wall targets and use a chisel and remove three to four inches of plaster away from and around the perimeter of this tile. Bond Kote the surface to insure proper bond of the new finish. Apply Diamond Brite (more durable quartz aggregate finish) –

Cost, Labor and Materials: \$160,725.00

Buy Board 20% Discount \$-32,145.00

Total cost: \$128,580.00



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		11/8/10			
Department:		Parks			
Department Head		Amy Fortenberry			
Agenda Coordinator (include phone #): Lynne Jones - 7109					
CAPTION					
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Addendum to the Real Estate Contract by and between the City of Plano, Texas and Emajejan Haggard Hall relating to the purchase of 51.103 acres at the northwest corner of Alma Drive and Park Boulevard in the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2010-11 thru 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		244,258	3,155,742	11,850,000	15,250,000
Encumbered/Expended Amount		-244,258	-10,200	0	-254,458
This Item		0	-2,000,000	-5,495,000	-7,495,000
BALANCE		0	1,145,542	6,355,000	7,500,542
FUND(S): PARK IMPROVEMENT CIP					
<p>COMMENTS: Funds for the current year portion are included in the 2010-11 Park Improvement CIP in the '09 Land Acquisitions project. This item is an addendum to the original contract based on the survey results that revised the acreage from 58.91 to 51.103. The total purchase price of the land is \$7,495,000, a reduction from the original \$8,640,000 based upon the reduced acreage. The payments will be spread out over four payments: \$1,000,000 at closing and \$1,000,000 payment in 2010-11, \$2,747,500 in 2011-12 and \$2,747,500 in 2012-13. In addition, the assessment lien payments will be deducted from the land purchase payments at a rate of \$208,000 each year for 2010-11, 2011-12 and 2012-13 for a total of \$624,000.</p> <p>STRATEGIC PLAN GOAL: Land purchases for parks relate to the City's Goal of Great Neighborhoods – 1st Choice to Live.</p>					
SUMMARY OF ITEM					
<p>This Resolution approves a First Addendum to a Real Estate Contract by and between the City of Plano, Texas and Emajejan Haggard Hall. The First Addendum revises the acreage down from 58.91 acres to 51.103 acres and the price down from \$8,640,000.00 to \$7,495,000.00 to be paid for the property as a result of a survey obtained after execution of the Contract.</p>					

Hall Tract Debt Payments Added
Total Purchase Price

11/1/2010

	Bonds	2010-11	2011-12	2012-13	2013-14
2010-11 Debt	2,000,000				
Interest		46,500	93,000	90,082	87,028
Principal			62,757	65,675	68,729
2011-12 Debt	2,747,500				
Interest			63,879	127,759	123,750
Principal				86,213	90,222
2012-13 Debt	2,747,500				
Interest				63,879	127,759
Principal					86,213
Combined	<u>7,495,000</u>				
Interest		46,500	156,879	281,720	338,537
Principal		<u>0</u>	<u>62,757</u>	<u>151,888</u>	<u>245,164</u>
Total		<u>46,500</u>	<u>219,636</u>	<u>433,608</u>	<u>583,701</u>
Annual Tax Rate Impact		0.02	0.09	0.18	0.24

Estimated debt payment using level debt and 4.65% interest rate.

O&M costs are expected to increase but are not scheduled during this time period.

Total Purchase Price \$7,495,000 less Assessments \$624,000 Net Price \$6,871,000.

Uses the Assessed Property Value of 24,680,898,705 each year.

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Addendum to the Real Estate Contract by and between the City of Plano, Texas and Emajeon Haggard Hall relating to the purchase of 51.103 acres at the northwest corner of Alma Drive and Park Boulevard in the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed First Addendum to a Real Estate Contract by and between the City of Plano, Texas and Emajeon Haggard Hall for the purchase of 51.103 acres of land located at the northwest corner of Alma Drive and Park Boulevard, a copy of which is attached hereto as Exhibit "A" (hereinafter called "First Addendum"); and,

WHEREAS, upon full review and consideration of the First Addendum, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee, shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the First Addendum, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the First Addendum and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the First Addendum.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**FIRST ADDENDUM TO THE
REAL ESTATE CONTRACT BY AND BETWEEN
EMAJEAN HAGGARD HALL AND CITY OF PLANO**

THIS FIRST ADDENDUM (“First Addendum”) is made and entered into by and between the **CITY OF PLANO** (“Buyer”) and **EMAJEAN HAGGARD HALL** (“Seller”)

WHEREAS, Buyer entered into a Real Estate Contract (“Contract”) with Seller, a copy of which is attached hereto as Exhibit “A”, to purchase land located at the northwest corner of Alma Drive and Park Boulevard; and

WHEREAS, the parties to the Contract wish to revise the acreage and price to be paid for the property as a result of a survey obtained after execution of the Contract;

NOW, THEREFORE, Buyer and Seller agree to amend the Contract as follows:

1. All references in the Contract to the acreage to be purchased are revised to read 51.103 acres.
2. Paragraph 2 of the Contract is revised to read:
 - “2. Purchase Price. Purchaser shall pay to Seller, Seven Million Four Hundred and Ninety-Five Thousand Dollars (\$7,495,000.00).”
3. Paragraph 3 of the Contract is revised to read:
 - “3. Payment Schedule. The purchase price shall be payable as follows:
 - A. One Million Dollars (\$1,000,000.00) shall be payable in cash at Closing.
 - B. There currently exists an outstanding street assessment lien against the Property in the amount of Six Hundred and Twenty Four Thousand Dollars (\$624,000.00). The street assessment lien shall be offset against the balance due to Purchaser under this agreement. The resulting balance of Five Million Eight Hundred and Seventy One Thousand Dollars (\$5,871,000.00) shall be paid to Purchaser in three installments as follows: Seven Hundred Ninety Two Thousand Dollars (\$792,000.00) on March 1, 2011; Two Million Five Hundred and Thirty Nine Thousand Five Hundred Dollars (\$2,539,500.00) on March 1, 2012; and Two Million Five Hundred and Thirty Nine Thousand Dollars (\$2,539,500.00) on March 1, 2013. Purchaser shall execute a

Promissory Note (**Exhibit “B”**) evidencing this installment agreement.

- C. The unpaid principal balance from time to time owing on said Promissory Note shall be interest free.
 - D. Purchaser shall have the right to prepay any of the principal on the Promissory Note at times other than when stated to be due.
4. All other provisions of the Contract and its exhibits are revised to be consistent with these changes. Provisions not amended by this First Addendum remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Addendum by signing below. The effective date of this First Addendum shall be the date of the City Council approval by Resolution No. _____, approved on the 8th day of November, 2010.

CITY OF PLANO

APPROVED AS TO FORM:

DIANE C. WETHERBEE
CITY ATTORNEY

THOMAS H. MUEHLENBECK
CITY MANAGER

EMAJEAN HAGGARD HALL

EXHIBIT "A"
REAL ESTATE CONTRACT

REAL ESTATE CONTRACT

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT OF SALE is made by and between **EMAJEAN HAGGARD HALL** (hereinafter referred to as "Seller") and **THE CITY OF PLANO, TEXAS** (hereinafter referred to as "Purchaser") upon the terms and conditions set forth herein.

WHEREAS, Seller is the owner of a tract of land, containing approximately 58.91 acres of land described in **Exhibit "A"** attached hereto (the "Property"); and

WHEREAS, Seller and Purchaser have agreed upon the terms and conditions under which Seller will sell the Property to Purchaser, and Purchaser will acquire the same from Seller.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Purchase and Sale. Seller hereby sells and agrees to convey to Purchaser, and the Purchaser hereby purchases and agrees to pay for the Property, together with all and singular the rights and appurtenances pertaining thereto, including mineral rights.

2. Purchase Price. Purchaser shall pay to Seller, Eight Million Six Hundred and Forty Thousand Dollars (\$8,640,000.00).

3. Payment Schedule. The purchase price shall be payable as follows:

- A. One Million Dollars (\$1,000,000.00) shall be payable in cash at Closing.
- B. There currently exists an outstanding street assessment lien against the Property in the amount of Six Hundred and Twenty Four Thousand Dollars (\$624,000.00). The street assessment lien shall be offset against the balance due to Purchaser under this agreement. The resulting balance of Seven Million Sixteen Thousand Dollars (\$7,016,000.00) shall be paid to Purchaser in three installments as follows: Seven Hundred Ninety Two Thousand Dollars (\$792,000.00) on March 1, 2011; Three Million One Hundred Twelve Thousand Dollars (\$3,112,000.00) on March 1, 2012; and Three Million One Hundred Twelve Thousand Dollars (\$3,112,000.00) on March 1, 2013. Purchaser shall execute a Promissory Note (**Exhibit "B"**) evidencing this installment agreement.
- C. The unpaid principal balance from time to time owing on said Promissory Note shall be interest free.
- D. Purchaser shall have the right to prepay any of the principal on the Promissory Note at times other than when stated to be due.

4. Earnest Money. As a condition precedent to this Contract, Purchaser shall:

- A. Have ten (10) business days after execution of this Contract by the parties to deliver a check in the amount of **ONE THOUSAND AND NO/100 DOLLARS**

(\$1,000.00) to the Title Company (hereinafter defined) as earnest money ("Earnest Money").

- B. In the event this Contract is closed, the Earnest Money shall be applied to the Purchase Price at Closing. In the event this Contract is not closed, then the Title Company shall disburse the Earnest Money in the manner provided for elsewhere herein.

5. Deed of Trust. The Promissory Note shall be secured by a vendor's lien reserved in the Special Warranty Deed (**Exhibit "C"**) and by a Deed of Trust (**Exhibit "D"**) covering the Property, with a power of sale. The Deed of Trust shall also contain the following terms and conditions:

- A. The Deed of Trust securing Purchaser's Promissory Note shall be fully released when the Promissory Note is paid in full.
- B. After receipt of notice by certified mail from Seller, Purchaser shall have thirty (30) calendar days to cure any default (other than a default in the payment of principal on its Promissory Note, for which Purchaser shall have a period of ten (10) business days after notice of cure), under Purchaser's Deed of Trust securing its Promissory Note before Seller may exercise any rights or remedies there under.

6. Survey. Purchaser shall cause an actual Field Survey of the entire (approximately) 58.91 acre tract of land to be prepared by Roome Land Surveying, 2000 Ave. G, Plano, Texas 75074, at Purchaser's sole expense. Once the survey is completed, the parties agree that the legal description as shown in the survey shall be inserted at Exhibit A of this Agreement prior to closing. Such survey shall:

- A. Establish the boundaries of and provide a metes and bounds description of the Property (approximately 58.91 acres as detailed in **Exhibit "A"**) to be purchased as well as surveys of the Property divided into three tracts as shown in **Exhibit "A"**.
- B. Locate and identify by Volume and Page all easements, roads, rights-of-way, and special features, and show any encroachments upon the property to be purchased.
- C. Contain the surveyor's certification as to the number of acres contained inside and outside the 100-year Floodplain for the property to be purchased.
- D. A copy of the survey and any reports or inspections ordered by Purchaser with respect to the Property shall be delivered to Seller at no cost to Seller.

7. Inspection

A. Purchaser, at Purchaser's sole cost and expense, shall have through and until forty (40) days from the Effective Date of this Contract ("Inspection Period") within which to conduct any and all engineering and economic feasibility studies of the Property which Purchaser may, at Purchaser's sole discretion, deem necessary to determine whether or not the Property is suitable for Purchaser's intended use. A check in the amount of **ONE HUNDRED AND 00/100 DOLLARS (\$100.00)** ("Inspection Fee") has been delivered to Seller as independent consideration for the Inspection Period. Purchaser's representatives

may enter upon the Property for the purpose of conducting any studies or tests, including, but without limitation, soil tests, obtaining topographical information, conducting engineering and economic feasibility studies and for all other similar preliminary work; provided, however, Purchaser shall and does hereby, to the extent allowed by law and without waiving any rights, defenses or immunities that may be available to it under state or federal law, indemnify and hold harmless Seller from and against any claims, costs, expenses or damage that Seller may suffer or incur as a result of such inspection, including, without limitation, (i) any and all attorneys' fees or court costs incurred by Seller in connection with any such claims or activities and (ii) mechanic's liens or claims that may be filed on or asserted against the Property by contractors, subcontractors or materialmen performing such work for Purchaser. In making any inspection hereunder, Purchaser will treat, and will cause any representative of Purchaser to treat, all information obtained by Purchaser pursuant to the terms of this Contract as strictly confidential. Further, in the event that Purchaser refuses or is unable to close under this Contract, for any reason whatsoever, any and all studies or tests, including, but without limitation, soil tests, topographical information, engineering and economic feasibility studies, or other similar preliminary work, shall immediately be delivered to Seller and thereafter become the sole property of Seller. The provisions of this Section shall survive closing.

B. In the event Purchaser shall notify Seller on or before the expiration of the Inspection Period, that Purchaser, for any reason whatsoever, does not desire to consummate this Contract, then, and in such event, this Contract shall terminate and the parties hereto shall have no further obligations to the other hereunder except as provided herein. Absent Purchaser's timely written notice to Seller of Purchaser's election to so terminate this contract, Purchaser shall waive any and all claim to terminate this Contract pursuant to this Section 7, and shall proceed to a Closing hereunder.

8. Good and Marketable Title. At Closing, Seller shall convey to Purchaser by Special Warranty Deed with vendor's lien in a form as shown in **Exhibit "C"** together with good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions except for the following:

- A. General real estate taxes for the year of Closing and subsequent years not yet due and payable;
- B. Public roads, streets and alleys, if any; and
- C. Such utility easements or other conditions as will in the opinion of Purchaser not adversely affect construction of improvements on the Property.

9. Title Commitment. Purchaser shall, at its sole expense, acquire a current title commitment for an Owner's Title Insurance Policy issued through Republic Title Company setting forth the state of title of the Property and all exceptions, including easements, restrictions, rights-of-way, covenants, reservations and other conditions, if any, affecting the Property which would appear in an Owner's Title Policy if issued. In the event any exceptions appear in such commitment, other than the standard printed exceptions (which shall be modified in the Owner's Title Policy as specified in Paragraph 8 hereof), that are unacceptable to Purchaser, then Purchaser shall, within ten (10) days after receipt thereof, notify Seller in writing of such fact. If the Purchaser fails to notify Seller of any objections to title within such ten (10) day period, Purchaser shall be deemed to have approved all exceptions appearing on the title commitment. Seller may then promptly undertake to eliminate or modify such unacceptable exceptions to the reasonable satisfaction of Purchaser. In the event Seller is

unable to do so within ten (10) days thereafter, or chooses not to do so, Purchaser may terminate this Contract by notice in writing to Seller, or may accept such title as Seller can deliver.

10. Owner's Title Policy. Purchaser shall acquire, at Purchaser's sole expense, the usual form of Texas Owner's Title Policy, issued by Republic Title Company in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property subject only to those title exceptions listed in Paragraph 5 hereof, and such other exceptions as may be approved in writing by Purchaser, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy provided however:

- A. The boundary and survey exceptions may be deleted at Purchaser's expense; and
- B. The exception as to the lien for taxes shall be limited to the year of Closing and shall be endorsed "Not Yet Due and Payable" if they be, in fact, not yet due and payable.

11. Closing. The Closing shall be held in the office of Republic Title Company, on or before the date which is 60 days after the execution of this contract, or at such other time, date and place as Seller and Purchaser may, in writing, agree upon (which date is herein referred to as the "Closing Date"). At the Closing:

- A. Seller shall deliver to Purchaser a duly executed and acknowledged Special Warranty Deed with Vendor's Lien, in the form shown attached, to convey the Property to Purchaser; and
- B. Purchaser shall pay to Seller the cash portion of the purchase price of the Property and execute the Note and Deed of Trust herein provided for;
- C. General real estate taxes for the year 2010 relating to the Property shall be prorated to the date of closing. All special taxes or assessments (other than the street assessment described in Section 3 B above), if any, to the Closing Date, and all delinquent taxes of any nature on the Property, including penalty and interest, shall be paid by Seller. All Closing Costs not mentioned specifically herein, including, without limitation, recording and escrow fees, shall be assessed to both parties equally.
- D. Possession of the Property shall be delivered subject to the Lease. Purchaser shall take possession of Tract 1 at closing.

12. Seller's Right to Lease the Property. As part of the consideration for the purchase of the Property, Seller and/or Mike Hall shall have the right to lease Tracts 2 and 3 of the Property from Purchaser at a yearly rental of ONE AND 00/100 DOLLAR (\$1.00) for a period of five (5) years from the date of Closing and for additional periods as may be mutually agreed upon by the parties but in no event shall the lease terminate on Tract 3 for as long as Emajean Haggard Hall physically resides on Tract 3. The Property shall be leased to Seller and/or Mr. Mike Hall, currently residing at 1329 West Park Blvd, Plano, Texas, as a personal single family residence and/or for agricultural purposes only.

Purchaser shall prepare the Lease, in a form as shown in **Exhibit "E"**, at its expense and it shall be executed by Purchaser and Seller at the Closing. The Lease Agreement shall provide, along with the standard provisions of an agricultural lease, that Purchaser shall have, after the fifth anniversary date following the Closing Date, the right to terminate the Lease Agreement as to Tract 2

and to use the released acreage for park purposes. Upon Emajeon Haggard Hall ceasing to physically reside on Tract 3 for a period greater than ninety (90) days, Mike Hall shall have the option to reside on Tract 3 until such time as the Purchaser has awarded a contract to begin the planning and design process for development of the entire property; at which time, Purchaser shall give not less than one full year's notice of its intent to terminate the lease as to Tract 3 and to use the released acreage for park purposes. After the expiration of the Lease or any extension thereof, all real improvements to the Property made during the lease period shall become the property of Purchaser.

13. Real Estate Commission. Seller and Purchaser acknowledge to each other that no real estate commissions have been occasioned by the execution and/or consummation of this Contract by either party's actions.

14. Miscellaneous.

- A. This Contract embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties;
- B. Time is of the essence of this Contract;
- C. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Seller or Purchaser, as the case may be, at the address set forth opposite the signatures of such party hereto;
- D. All the terms and conditions of this Contract are hereby made binding on the executors, heirs, administrators, successors and assigns of all of the parties hereto;
- E. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise;
- F. The captions used in connection with paragraphs of this Contract are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Contract; and
- G. This Contract shall not be considered fully executed or binding on Purchaser until the same shall be executed by Seller and the City Manager of the City of Plano and approved and accepted by the City Council of the City of Plano by Resolution in open meeting as required by law. After such approval and acceptance, Purchaser shall deliver to Seller a certified copy of the Resolution as evidence of the authority of the signatories hereto to bind Purchaser on this Contract and to perform same in accordance with its terms.

15. Assignment of Contract. This Contract may not be assigned by Purchaser or Seller.

16. Termination and Remedies. In the event that any of the Seller's representations or warranties contained herein are untrue on the Closing Date, or Seller shall have failed on the Closing Date to have performed the covenants and agreements contained herein which are to be performed by Seller on or before the Closing Date, Purchaser may terminate this Contract by giving written notice of termination to Seller on or before the Closing Date. If this Contract is terminated by Purchaser

pursuant to the express provisions hereof pursuant to the mutual agreement of the parties hereto, Seller and Purchaser shall have no further obligation or liabilities to the other hereunder. If Seller defaults in performing its obligations hereunder for any reason, other than Purchaser's default, Purchaser may terminate this Contract, or at its option, sue for specific performance. If Purchaser shall fail to consummate the Contract for any reason, other than Seller's default or the termination of this Contract pursuant to the provisions hereof, Seller may terminate this Contract or, at its option, sue for specific performance.

17. Survival of Closing. Purchaser and Seller agree that the provisions of any paragraph of this Contract, the terms of which are not satisfied completely at the Closing, shall survive the Closing of this Real Estate Contract.

18. NO REPRESENTATIONS OR WARRANTIES; AS-IS. **SUBJECT TO THE INSPECTION RIGHTS AS SET FORTH IN SECTION 7 ABOVE, PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT PURCHASER HAS THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE PROPERTY. PURCHASER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT PURCHASER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY BY PURCHASER AND THAT PURCHASER IS PURCHASING THE PROPERTY ON AN "AS-IS, WHERE-IS, AND WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE. PURCHASER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. THE EXPRESS INTENTION OF PURCHASER AND SELLER IS THAT PURCHASER SHALL PURCHASE THE PROPERTY FROM SELLER WITHOUT ANY REPRESENTATIONS, WARRANTIES, OR COVENANTS, EXPRESS OR IMPLIED, FROM OR OF SELLER, OTHER THAN THE SPECIAL WARRANTY OF TITLE AS PROVIDED HEREIN. THIS PARAGRAPH 18 SHALL SURVIVE THE CLOSING.**

19. All notices required to be furnished hereunder shall be furnished to (1) Seller and (2) Purchaser as follows:

FOR PURCHASER: Director of Parks and Recreation
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

FOR SELLER : Mike Hall
1329 West Park
Plano, Texas 75075

or such other address as Seller or Purchaser shall specify in a notice satisfying this Section.

DATED AS OF THIS 12 DAY OF August, 2010.

SELLER:

EMAJEAN HAGGARD HALL



PURCHASER:

CITY OF PLANO, TEXAS

By: 
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM


Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF Collin §

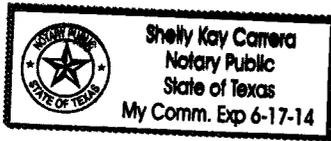
This instrument was acknowledged before me on the 12 day of August, 2010 by **EMAJEAN HAGGARD HALL**.



Bettie Miller
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 5th day of October, 2010 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.



Shelly Kay Carrera
Notary Public, State of Texas

EXHIBIT "A"

THE PROPERTY

METES AND BOUNDS DESCRIPTION
(To Be Inserted Upon Completion of Survey)



EXHIBIT "B"
PROMISSORY NOTE

Date:

Borrower: City of Plano, Collin County, Texas

Borrower's Mailing Address: City of Plano
1520 Avenue K
Plano, Texas 75074

Lender: Emajeon Haggard Hall

Place of Payment:

Principle Amount: Seven Million Sixteen Thousand Dollars (\$7,016,000.00)

Annual Interest Rate: 0.00 percent

Maturity Date: March 1, 2013

Annual Interest Rate on Matured, Unpaid Amounts: 0.00 percent

Terms of Payment: The Principal Amount is due and payable in annual installments as follows:

Seven Hundred and Ninety Two Thousand Dollars (\$792,000.00) due on March 1, 2011;

Three Million One Hundred and Twelve Thousand Dollars (\$3,112,000.00) due on March 1, 2012; and

Three Million One Hundred and Twelve Thousand Dollars (\$3,112,000.00) due on March 1, 2013.

Borrower may prepay this note in any amount at any time before the Maturity Date without penalty or premium.

Security for Payment: This note is secured by a deed of trust dated _____ from Borrower to _____, trustee, which covers the following real property:

Other Security for Payment: Borrower promises to pay to the order of Lender the Principal Amount. This note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date.

Notice to Cure Default: Notwithstanding any other provisions of this note, in the event of a default, before exercising any of Lender's remedies under this note or any deed of trust securing it, Lender will first give Borrower written notice of default and Borrower will have ten days after notice is given in which to cure the default.

Borrower is responsible for all obligations represented by this note.

Borrower

EXHIBIT "C"

FORM OF SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN §

THAT EMAJEAN HAGGARD HALL, an individual ("**Grantor**"), for and in consideration of (a) the sum of Ten and No/100 Dollars cash, (b) the execution and delivery by Grantee of that certain Note dated of even date herewith (the "**Note**") executed by Grantee, payable to the order of Grantor, said Note being secured by a first and superior vendor's lien and superior title retained in this deed in favor of Grantor, and by a first-lien Deed of Trust of even date herewith from Grantee to _____, Trustee for the benefit of Grantor, and (c) other good and valuable consideration paid in hand, the receipt and sufficiency of which is hereby acknowledged, by CITY OF PLANO, TEXAS (the "**Grantee**"), whose address is _____, HAS GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents DO GRANT, BARGAIN, SELL and CONVEY unto Grantee: (i) the real property described in **Exhibit A** attached hereto and made a part hereof (the "**Real Property**"), (ii) Grantor's interest in all rights, privileges and easements appurtenant to the Real Property, including, without limitation, all oil gas and other minerals and all hydrocarbon substances of every nature, as well as all development rights, air rights, water, water rights (and water stock, if any) relating to the Real Property and any easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property, and (iii) all improvements and fixtures located on the Real Property (the Real Property, together with clause (ii) and (iii) above being hereinafter sometimes collectively referred to as the "**Property**").

This conveyance and the warranties of title herein are expressly made subject only to the liens, encumbrances, easements and other exceptions set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference for all purposes to the extent the same are valid and subsisting and affect the Property (the "**Encumbrances**").

TO HAVE AND TO HOLD the Property unto Grantee, and Grantee's successors and assigns forever, and Grantor does hereby bind Grantor, and Grantor's successors, to WARRANT and FOREVER DEFEND, all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, but subject to the Encumbrances.

The vendor's lien against and superior title to the Property is hereby retained in favor of Grantor, its successors and assigns, until the Note, together with all interest and other sums to accrue or to become payable

**EXHIBIT "A" (to Warranty Deed)
The Property**

METES AND BOUNDS DESCRIPTION
(To Be Inserted Upon Completion of Survey)



**EXHIBIT "B" (to Warranty Deed)
ENCUMBRANCES**

EXHIBIT "D"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED OF TRUST

Date: _____, 2010

Grantor: CITY OF PLANO, TEXAS

Grantor's Mailing Address (including county):

Trustee: _____

Trustee's Mailing Address (including county):

Beneficiary: EMAJEAN HAGGARD HALL

Beneficiary's Mailing Address (including county):

*1329 W Park Blvd
Plano, TX 75075
Collin*

Note:

Date: _____, 2010

Amount: \$7,016,000.00

Maker: The City of Plano, Texas

Payee: Emajeane Haggard Hall

Final Maturity Date: March 1, 2013

Terms of Payment (optional): As therein provided.

Property (including any improvements):

See attached Exhibit A.

Prior Lien(s) (including recording information):

None.

Other Exceptions to Conveyance and Warranty:

None.

For value received and to secure payment of the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, this deed of trust shall have no further effect, and Beneficiary shall release it at Beneficiary's expense.

Grantor's Obligations

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve the lien's priority as it is established in this deed of trust; and
5. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

Beneficiary Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and 30 days to cure any non-monetary default or 10 days to cure any monetary default, the Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

General Provisions

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rental and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession

of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. When the context requires, singular nouns and pronouns include the plural.
9. The term note includes all sums secured by this deed of trust.
10. This deed of trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.
11. If Grantor and Maker are not the same person, the term Grantor shall include Maker.
12. Grantor may prepay the note at any time without penalty. Upon the payment in full of the note, this deed of trust shall be released.
13. Grantor represents that this deed of trust and the note are given for the following purposes:

The indebtedness, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien thereon retained in deed of even date herewith to the undersigned, and this Deed of Trust is given as additional security for the payment of said indebtedness.

THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the date first set forth above.

CITY OF PLANO, TEXAS

By: _____
Thomas H. Muehlenbeck
City Manager

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010 by Thomas H. Muehlenbeck, City Manager of the City of Plano, Texas, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Ginger M. Webber
Jackson Walker L.L.P.
777 Main Street, Suite 2100
Fort Worth, Texas 76102

Exhibit A (to Deed of Trust)

Legal Description

(To Be Inserted Upon Completion of Survey)

EXHIBIT "E"

LEASE AGREEMENT

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF COLLIN

§

THIS LEASE AGREEMENT ("Lease Agreement") entered into as of the date recited at the conclusion of this Lease Agreement, is by and between **THE CITY OF PLANO, TEXAS** (a Texas home-rule municipal corporation, acting hereby through its duly authorized City Manager (hereinafter referred to as "Lessor") and Emajeane Haggard Hall and Mike Hall, being of Collin County, Texas (hereinafter collectively called "Lessees");

WITNESSETH

I.

Lessor hereby leases to Lessees and Lessees hereby take from Lessor, the property situated within the City of Plano, County of Collin, State of Texas, as described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with all improvements, rights, privileges, easements and appurtenances belonging to or in any way pertaining to the said premises (all leased premises herein called the "Property").

II.

The term of this Lease Agreement shall commence on the date hereof and shall continue for a period of five (5) years. The Lessees may, with Lessor's consent, renew the lease for additional periods as may be mutually agreed upon by the parties following the initial five (5) year lease period, subject to the same terms and conditions herein stated. Lessees' notice to extend the lease and Lessor's consent must be given to each other in writing at least ninety days before the end of the initial lease period. Failure to give timely notice or Lessor's failure to give consent will result in termination of this Lease Agreement. Notwithstanding the above, the lease for Tract 3 as shown in Exhibit "A" shall not terminate for as long as Emajeane Haggard Hall physically resides on Tract 3. Also, her son, Mr. Mike Hall, shall have the option to reside on Tract 3 until such time as the Purchaser has awarded a contract to begin the planning and design process for development of the entire property; at which time, Purchaser shall give not less than one full year's notice of its intent to terminate the lease as to Tract 3 and to use the released acreage for park purposes. The Property shall be leased to Lessees as a personal single family residence and/or for agricultural purposes only.

III.

Lessees agree to pay to Lessor an annual rental of ONE AND 00/100 DOLLARS (\$1.00). The first such payment shall be due on the date of execution hereof by Lessor; and each subsequent payment shall be due on the 10th day following the anniversary date of this Lease Agreement. All such payments shall be mailed or delivered to Lessor

at its address, and to the attention of the person hereinafter stated in this Lease Agreement. If any ad valorem taxes accrue on the Property as a result of the use or occupancy of the Property by Lessees, Lessees shall be responsible for payment of those taxes.

IV.

Lessees shall have the right to reside on and/or use the Property for agricultural purposes only, including the growing of crops and raising of livestock or other uses expressly approved by the Lessor, which approval shall not be unreasonably withheld. Lessees shall have the use and privilege of occupancy of barns and other outbuildings presently situated on the Property. Lessees shall not put the Property to any use not related to those set out in this Section. No drilling of any kind shall occur on the property without the express consent of Lessor. In the event the Lessees request and receive permission to drill on the property, the Lessees shall comply with all city rules, regulations, policies, procedures and ordinances.

V.

Lessor shall have the right to come upon the leased premises or any part thereof at all reasonable times for the purpose of inspection of the Property or any portion of it, other than the residence, which may be inspected with prior written notice and by appointment. Lessor shall further have the right-of-way over the Property for the purposes of making such inspections after notifying the Lessees at least 24 hours in advance.

VI.

The Lessees shall not sub-lease, assign or otherwise transfer any of their rights, titles or interests to any portion of the Property during the term of this Lease Agreement without the prior written consent of Lessor.

VII.

Lessees shall be responsible for maintenance of all fences and improvements existing or to be placed on the Property by Lessees during the entire term of the Lease Agreement. Lessees have responsibility to keep the land mowed.

VIII.

Lessees shall be responsible for repairing and/or replacing any real property improvements on the Property which is abused, damaged, or destroyed by the negligence or intentional misconduct of Lessees.

Lessees shall immediately inform Lessor in writing of any damage to or destruction of real property improvements on the Property. Upon receipt of such written notice Lessor shall investigate the circumstances surrounding the destruction or damage involved. If the damage or destruction was not caused by Lessees's negligence, carelessness or abuse, or the negligence, carelessness or abuse of Lessees's invitees, guests or employees, Lessor may, but is not required to, replace or repair the damaged or destroyed improvements.

LESSEES SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD LESSOR, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THIS LEASE OR CAUSED BY THE NEGLIGENT ACT OR OMISSION OR THE INTENTIONAL ACT OR OMISSION OF LESSEES, THEIR OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES WHO MAY ENTER THE PROPERTY DURING THE TERM OF THIS LEASE, EXCEPT TO THE EXTENT CAUSED BY THE LESSOR'S AGENTS, EMPLOYEES, OR CONTRACTORS. LESSEES ARE EXPRESSLY REQUIRED TO DEFEND LESSOR AGAINST ALL SUCH CLAIMS.

IX.

(a) Lessees shall have the right to use surface and/or storm waters flowing across the Property in natural tributaries or otherwise, for such uses as they may desire during this Lease Agreement, without any payment being made therefore to Lessor.

(b) Lessees shall be solely responsible for furnishing any water to the Property for their use during this Lease Agreement, which water is transported through pipes or mains from external sources.

(c) Lessees shall be solely responsible for providing and paying for any and all utility services to the Property they desire during the Lease Agreement, including but not limited to electricity, gas, and telephone services.

X.

LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGE TO THE PROPERTY, CROPS OR LIVESTOCK OF LESSEES OR OF OTHERS LOCATED ON THE PROPERTY, NOR FOR THE LOSS OR DAMAGE TO ANY PROPERTY OR LIVESTOCK OF LESSEES BY THEFT OR OTHERWISE. LESSOR SHALL NOT BE LIABLE FOR ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM LESSEES OCCUPANCY AND USE OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIRE, EXPLOSION, STEAM, GAS, ELECTRICITY, WATER, RAIN, OR SNOW, OR BY ANY CAUSE OF WHATSOEVER NATURE.

LESSEES HAVE INSPECTED THE PROPERTY AND ACCEPT IT IN "AS IS" CONDITION. ALL PROPERTY AND LIVESTOCK OF LESSEES KEPT OR STORED ON THE PROPERTY SHALL BE SO KEPT OR STORED AT THE RISK OF LESSEES ONLY, AND LESSEES SHALL HOLD LESSOR HARMLESS FROM ANY CLAIM ARISING OUT OF DAMAGE TO THE SAME.

EXECUTED THIS _____ day of _____, 2010.

PURCHASER:

CITY OF PLANO, TEXAS

By:

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

TENANT:

Emajean Haggard Hall
Name: EMAJEAN HAGGARD HALL
Address: 1329 W PARK BLVD
PLANO TX 75075

TENANT:

Michael H Hall
Name: MICHAEL H HALL
Address: 1329 W PARK BLVD
PLANO TX 75075

EXHIBIT "A"

DESCRIPTION OF LEASE PROPERTY



Exhibit "A" to Lease Agreement – Tract 3

Any illustrated boundary line that does not currently follow an existing fence line will be Lessor's responsibility to establish a new fence. New fences will only be required if Tract 2 is no longer leased to Lessor per terms of the Lease Agreement. Should City open Tract 2 to the public before design and development of entire property, City will erect a security fence along northwest boundary line.



EXHIBIT "B"

INSURANCE REQUIREMENTS

**City of Plano
Insurance Requirements**

Type of Insurance	Amount of Insurance	Provisions
1. Commercial General a)	\$1,000,000 per occurrence bodily injury & property damage. The <i>Damage to Premises Rented To You</i> limit should be increased to \$50,000.	Lease of City of Plano owned remises require tenants to provide Commercial General Liability. City of Plano must be named as an additional insured.
2. Business Auto Liability	As required by State of Texas	Required where a vehicle will be used on the premises. Coverage must include: All owned, leased, hired, non-owned and employee non-owned vehicles.
3. Commercial Property	Value of tenant's property	A waiver of subrogation must be in favor of the City of Plano.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		11/8/10			
Department:		Parks			
Department Head		Amy Fortenberry			
Agenda Coordinator (include phone #): Lynne Jones - 7109					
CAPTION					
<p>A Resolution of the City Council of the City of Plano, Texas authorizing the payment of disputed sales tax in the amount of \$82,502.13 for certain operations at the Pecan Hollow Golf Course and for the City Manager or his designee to execute any agreements to effectuate this settlement; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	-82,502		-82,502
BALANCE		0	-82,502	0	-82,502
FUND(S): GENERAL FUND					
<p>COMMENTS: This item is for the dispute settlement with the State Comptroller's Office regarding sales tax on green fees and driving range fees. There is a companion supplemental appropriation agenda item in the same amount, \$82,502.</p> <p>STRATEGIC PLAN GOAL:Settlement of disputed sales tax relates to the City's Goal of "Financially Strong City with Service Excellence."</p>					
SUMMARY OF ITEM					
<p>This settlement is a result of a dispute with the Comptroller's office on whether the Pecan Hollow Golf Course green fees should be subject to sales tax. The settlement is for over a four year period and is approximately one third of what the Comptroller determined in its audit. \$70,000.00 of the settlement relates to the green fees and \$12,502.13 for the driving range.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
n/a			n/a		

A Resolution of the City Council of the City of Plano, Texas authorizing the payment of disputed sales tax in the amount of \$82,502.13 for certain operations at the Pecan Hollow Golf Course and for the City Manager or his designee to execute any agreements to effectuate this settlement; and providing an effective date.

WHEREAS, the City of Plano owns and maintains the Pecan Hollow Golf Course, which is operated by a third party and the City implemented and programmed equipment that was used to calculate sales tax on certain services at this golf course; and

WHEREAS, the Texas Comptroller of Public Accounts "Comptroller" conducted a sales tax audit and determined that sales tax on fees generated from use of the greens and the driving range have not been collected or paid since October 1, 2006; and,

WHEREAS, the City has contested that the green fees are subject to sales tax for reasons including but not limited to the fact the fees are set by the City, the third party receives no amount of the fees, the City fully controls the charges and operation of the course, including its maintenance and improvements; and

WHEREAS, there exists a bona fide dispute and controversy between the Comptroller, the City, and the operator of the course that sales tax is owed for the green fees and by reason of such dispute, the parties desire to compromise and settle all claims in any way arising from such sales tax audit in an amount less than what the Comptroller has concluded from its audit.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The City Council hereby approves payment in the amount of \$82,502.13 to the Texas Comptroller of Public Accounts as settlement of the disputed amount of sales tax owed on certain golf course revenues from the Pecan Hollow Golf Course. The City Manager or his designee is authorized to execute any and all documents to effectuate this settlement.

Section II. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/08/2010		
Department:		Budget & Research		
Department Head		Karen Rhodes-Whitley		
Agenda Coordinator (include phone #): Casey Srader, x5152				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, transferring the sum of \$82,502 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2010-11 for the purpose of providing funds for payment of disputed sales tax for certain operations at the Pecan Hollow Golf Course; amending the budget of the City and Ordinance 2010-9-8, Section 1, Item "A" to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	197,057,891	0	197,057,891
Encumbered/Expended Amount	0	0	0	0
This Item	0	82,502	0	82,502
BALANCE	0	197,140,393	0	197,140,393
FUND(S): GENERAL FUND				
<p>COMMENTS: Supplemental appropriations approved to date for the General Fund, including this item, total \$82,502. The current General Fund balance supports this supplemental appropriation in the amount of \$82,502. There is a companion agenda item in the amount of \$82,502 for a Resolutuion authorizing the payment of disputed sales tax to the State Comptroller's Office.</p> <p>STRATEGIC PLAN GOAL: Providing additional funding for the payment of disputed sales tax to the State Comptroller's Office relates to the City's Goal of "Financially Strong City with Service Excellence".</p>				
SUMMARY OF ITEM				
Supplemental Appropriation No. 1				
<p>This supplemental appropriation will provide necessary funding for payment of disputed sales tax to the State Comptroller's Office. The settlement is a result of a dispute with the State Comptroller's Office on whether the Pecan Hollow Golf Course green fees should be subject to sales tax. The settlement is for over a four-year period and is approximately one-third of what the Comptroller determined in its audit. \$70,000 of the settlement relates to the green fees and \$12,502 for the driving range.</p>				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Supplemental Appropriation Log	Other Departments, Boards, Commissions or Agencies n/a

An Ordinance of the City of Plano, Texas, transferring the sum of \$82,502 from the General Fund unappropriated fund balance for Fiscal Year 2010-11 to the General Fund operating appropriation for the purpose of providing funds for payment of disputed sales tax for certain operations at the Pecan Hollow Golf Course; amending the budget of the City and Ordinance 2010-9-8, Section 1, Item "A" as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.

WHEREAS, the City Council of the City of Plano approved and adopted the budget for the City for Fiscal Year 2010-11 setting the appropriations for the General Fund at \$197,057,891; and

WHEREAS, the City of Plano owns and maintains the Pecan Hollow Golf Course, which is operated by a third party and the City implemented and programmed equipment that was used to calculate sales tax on certain services at this golf course; and

WHEREAS, the Texas Comptroller of Public Accounts "Comptroller" conducted a sales tax audit and determined that sales tax on fees generated from use of the greens and the driving range have not been collected or paid since October 1, 2006; and

WHEREAS, the City has contested that the green fees are subject to sales tax for reasons including but not limited to the fact the fees are set by the City, the third party receives no amount of the fees, the City fully controls the charges and operation of the course, including its maintenance and improvements; and

WHEREAS, there exists a bona fide dispute and controversy between the Comptroller, the City, and the operator of the course that sales tax is owed for the green fees and by reason of such dispute, the parties desire to compromise and settle all claims in any way arising from such sales tax audit in an amount less than what the Comptroller has concluded from its audit; and

WHEREAS, the City Council deems it to be in the best interest of the City of Plano and its citizens to expend public funds to pay the owed sales tax; and

WHEREAS, such necessary and essential costs cannot be fully met through appropriations in the existing budget; and

WHEREAS, the City Council now finds that additional appropriations to the General Fund Operating Appropriation should be made in order to provide additional funding for the payment of owed sales tax, and that such action is a public necessity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

SECTION I. The estimated sum of EIGHTY TWO THOUSAND FIVE HUNDRED TWO DOLLARS (\$82,502) is hereby transferred from the General Fund unappropriated fund balance to the General Fund operating appropriation.

SECTION II. The budget of the City of Plano for Fiscal Year 2010-11 as adopted by Ordinance No. 2010-9-8 is amended to reflect the action taken herein.

SECTION III. The actions taken herein are found and declared to be a case of public necessity.

SECTION IV. This supplemental appropriation Ordinance No. 1 shall become effective immediately from and after the date of its passage.

DULY PASSED AND APPROVED THIS THE 8th DAY OF NOVEMBER, 2010.

Phil Dyer, **MAYOR**

ATTEST:

Diane Zucco, **CITY SECRETARY**

Diane C. Wetherbee, **CITY ATTORNEY**

**FY 2010-11
SUPPLEMENTAL APPROPRIATIONS**

Description	Department	Amount
Supplemental Appropriation for Pecan Hollow Golf Course sales tax audit.	Parks & Recreation	82,502
TOTAL GENERAL FUND APPROPRIATIONS		<u>\$ 82,502</u>
TOTAL CATV FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL MUNICIPAL DRAINAGE FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL WATER & SEWER FUND		<u>\$ -</u>
TOTAL SUSTAINABILITY & ENVIRONMENTAL FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL CONVENTION & TOURISM FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL PROPERTY/LIABILITY FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL PROPERTY MANAGEMENT FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL GOLF COURSE FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL RECREATION FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL INTERNAL SERVICE FUNDS AND OTHER FUNDS APPROPRIATIONS		<u>\$ -</u>
GRAND TOTAL ALL FUNDS		<u>\$ 82,502</u>



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		11/08/10			
Department:		Sustainability & Environmental Services			
Department Head		Nancy Nevil			
Agenda Coordinator (include phone #): Tiffany Stephens x4264					
CAPTION					
<p>A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of a contract by and between ALLIED WASTE SYSTEMS, INC. d/b/a Allied Waste Services of Plano, a Delaware corporation, hereinafter referred to as "Contractor", and the CITY OF PLANO, TEXAS, a home-rule municipality, hereinafter referred to as "City", to be effective upon approval of the Plano City Council and subsequent execution by the Plano City Manager or his designee.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11 to 2020-21	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	300,000	0	300,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	300,000	0	300,000
FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND					
<p>COMMENTS: This item, in the amount of \$300,000 is included in the FY 2010-11 Budget as recycling revenue. Approval of the Recycling Processing Agreement with Allied waste will provide for the processing and sale of recyclable materials collected by the City of Plano. In exchange for these services, Allied Services will keep 20% of all revenues from the sale of recyclable materials, while the City of Plano receives the remaining 80%. Recycling revenues are primarily driven by the global market for recyclable materials and volume of recyclable materials discarded by Plano households.</p> <p>STRATEGIC PLAN GOAL: Generation of revenues through the sale of collected recyclable materials relates to the goal of a Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>Staff recommends approval of resolution to ratify contract by and between Allied Waste Systems, Inc. d/b/a Allied Waste Services of Plano for residential recycling processing services.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution					

A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of a contract by and between ALLIED WASTE SYSTEMS, INC. d/b/a Allied Waste Services of Plano, a Delaware corporation, hereinafter referred to as "Contractor", and the CITY OF PLANO, TEXAS, a home-rule municipality, hereinafter referred to as "City", to be effective upon approval of the Plano City Council and subsequent execution by the Plano City Manager or his designee.

WHEREAS, Allied Waste Services of Plano has been providing residential recycling processing services for the City since July 31, 1999; and

WHEREAS, the contract with Allied Waste Services of Plano for the residential recycling processing services expired on March 27, 2009; and

WHEREAS, City and Allied Waste Services of Plano entered into an interim contract for residential recycling processing services that expired on October 31, 2010; and

WHEREAS, Contractor has performed the service in a satisfactory manner and the City wishes to continue this service for residential recycling processing services under the terms and conditions set forth in the Contract, a copy of which is attached hereto as Exhibit A; and

WHEREAS, upon full review and consideration of the Contract and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be ratified and approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section 1. The terms and conditions of the Contract, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, is hereby in all things ratified and execution by the City Manager or his designee on behalf of the City of Plano is hereby approved.

Section II. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CONTRACT
BETWEEN CITY OF PLANO AND ALLIED WASTE SYSTEMS, INC.
d/b/a ALLIED WASTE SERVICES OF PLANO
FOR RESIDENTIAL RECYCLING PROCESSING SERVICES

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

THIS CONTRACT is made and entered by and between **ALLIED WASTE SYSTEMS, INC. d/b/a Allied Waste Services of Plano**, a Delaware corporation, hereinafter referred to as “Contractor”, and the **CITY OF PLANO, TEXAS**, a home-rule municipality, hereinafter referred to as “City”, to be effective upon approval of the Plano City Council and subsequent execution by the Plano City Manager or his designee.

WHEREAS, Allied Waste Services of Plano has been providing residential recycling processing services for the City since July 31, 1999; and

WHEREAS, the contract with Allied Waste Services of Plano for the residential recycling processing services expired on March 27, 2009; and

WHEREAS, City and Allied Waste Services of Plano entered into an interim contract for residential recycling processing services that expired on October 31, 2010; and

WHEREAS, Contractor has performed the service in a satisfactory manner and the City wishes to continue this service for residential recycling processing services under the terms and conditions set forth below.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree to

I.
DEFINITIONS

Unless otherwise specified herein, the following terms shall have the following meanings:

1.1 **“Collect,” “Collected,” and “Collection”** shall mean and refer to the picking up and transporting of Recyclable Materials, to the appropriate Processing Facility, identified herein, in compliance with applicable federal, state and local laws, statutes, ordinances, rules and regulations.

1.2 **“Commingled Materials”** shall mean all Recyclable Materials, as herein defined.

1.3 “Agreement Year” shall mean a twelve (12) month period of time commencing upon the Effective Date hereof and, thereafter, any anniversary of the Effective Date.

1.4 “Equipment” shall mean all vehicles, containers, machinery, tools and equipment, as well as related supplies and materials, reasonably necessary for the Contractor’s performance hereunder.

1.5 “Gross Revenue” shall mean revenue received from the sale of Recyclable Materials provided by City hereunder before deductions for Processing Allowances are made.

1.6 “Net Revenue” shall mean Gross Revenue minus Processing Allowances. No other deductions are permitted.

1.7 “Process”, “Processed” and “Processing” shall mean all necessary steps and actions to prepare Recyclables for market, including actual sale of such Recyclables.

1.8 “Processing Allowances” shall mean the amount of money deducted from Gross Revenues as full compensation to Contractor for all costs of Processing Recyclables hereunder, shall be \$51.00 per ton for Single-Stream Recyclables processing.

1.9 “Processing Facility” and “Facility” shall mean the facility located at 4200 E. 14th Street, Plano, Texas.

1.10 “Recyclables”, “Materials”, and “Recyclable Materials” shall mean the following individual commodities: glass bottles and jars (all colors), aluminum cans, bi-metal and steel food and beverage cans, including aerosol cans, corrugated containers, newspapers with inserts, magazines, other types of clean and dry paper products, all plastics bottles or containers bearing the “1”, “2”, “3”, “4”, “5”, “6”, or “7” symbol except Styrofoam, and any materials added pursuant to the terms of this Contract; provided however, in no event shall such terms include hazardous materials as defined by applicable federal, state or local law.

1.11 “Recycling” shall mean the reclamation and/or recovery of all recyclable matter from the City’s solid waste residential customers, including but not limited to, glass, paper, plastic, tin, and aluminum.

1.12 “Single-Stream Recyclables” shall mean all recyclables collected in one stream, with no sorting required prior to processing.

II.
TERM OF CONTRACT

The initial term of this Contract is for a period of ten (10) years, commencing on November 1, 2010 and ending on October 31, 2020. The Initial Term of this Agreement may be extended by agreement of the Parties for a total of two (2) additional five (5) year periods. Contractor must give written notice to City of its desire to extend the term for an additional five (5) year period, such notice to be given no more than one hundred twenty (120) days prior to the expiration of the term. The City shall, after Contractor gives such notice, have sixty (60) days in which to notify Contractor of its agreement to extend the Term of the Contract.

CONTRACTOR and CITY herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for services provided under this contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

III.
SCOPE OF WORK

Contractor shall provide all supervision, labor, materials and equipment necessary for processing and marketing of all residential Recyclables collected by City and delivered to Contractor's facility by the City of Plano in accordance with the terms and conditions of this Contract.

IV.
COLLECTION

4.01 Collection Schedule. Contractor shall allow City to deliver Recyclable Materials for Processing at the Facility five (5) days a week (Monday through Friday) between the hours of 7:00 a.m. and 7:00 p.m., except for specified holidays and on Saturday when otherwise required by this contract. City shall provide Contractor with its holiday schedule at the beginning of each calendar year. Contractor agrees and understands that if a holiday occurs, collection schedules shall be moved forward to the next day thereby requiring Saturday Processing by Contractor. Contractor will be given a 30 (thirty) day notice of any proposed permanent collection schedule changes. Permanent collection schedule changes shall be agreed upon in writing by the parties. Based upon need as determined by City, City may require Contractor to provide Processing services on a day or days other than those designated as a part of a regular collection schedule or holiday schedule, provided however that to the extent practicable, City shall give Contractor at least seven (7) days prior written notice with respect to such day or days. Notice shall be provided as specified herein. Notwithstanding the foregoing, City shall not require Processing services on Sundays.

4.02 Receipt of City Collected Materials. Contractor shall utilize reasonable efforts to minimize the time to weigh and off-load all City vehicles arriving at the Facility. All vehicles shall be received on a first-come first-served basis, and in no event shall Allied Waste Services grant any preferences to their vehicles in prioritizing receipt of vehicles. Notwithstanding the foregoing, at no time shall the wait time for a City vehicle exceed thirty (30) minutes from the time of weigh-in by such vehicle to the time that unloading is complete. Contractor will provide a weight ticket to each City driver for each load delivered to Contractor. All scales and equipment used by Contractor to weigh such loads shall be calibrated and adjusted accordingly for accuracy at least one time per year by persons who are qualified to perform such tasks and who are deemed satisfactory by City, and Contractor shall be required to provide proof of such calibration and accuracy each year on the anniversary date of this agreement.

4.03 Load Rejections. Contractor shall immediately notify City's Environmental Waste Services Superintendent if a load received from one of the City's collection vehicles appears to have a non-recyclable contamination rate higher than fifteen (15) percent. Contamination occurs when a material, other than a Recyclable Material as defined in this agreement, is included as part of a load of Recyclable Materials. If Contractor determines that a load is questionable, Contractor shall move it to an area that does not interfere with the normal processing operation, so that further inspection can be made by the City. Since the contamination rate of a load will be a subjective judgment, the load will not be refused unless a Supervisor from the City is present at the Processing Facility and is in agreement that the load is unacceptable. City's representative shall arrive within one hour of notice by Contractor. If City's representative fails to arrive within the one-hour time frame, Contractor may reject the load; however, Contractor shall notify City's Environmental Waste Services Superintendent of the rejection by 7:00 p.m. of the same day. Such notice shall contain a detailed explanation of Contractor's reasons for rejection. In the event that the parties are unable to resolve a dispute regarding the contamination rate of a load deemed questionable by Contractor, Contractor shall sort the contents of the questionable load by commodity, and weigh and Process each such commodity individually, except that materials claimed to be contaminants may be weighed without sorting or Processing. If after sorting, weighing and Processing as specified above, the contamination rate for the load is higher than fifteen (15) percent, City shall pay all costs for disposal of the contaminants. However, if the contamination rate for the load is equal to or less than fifteen (15) percent, Contractor shall pay all costs for disposal of the contaminants.

If the parties agree that a load is contaminated, as defined herein, Contractor shall be responsible for all disposal costs for the first two contaminated loads received from City during each calendar month. City shall be responsible for all disposal costs for all other contaminated loads in excess of two (2) loads per calendar month. Payment for disposal costs by City shall be in lieu of Processing Allowances for such contaminated loads. City may, at its option, independently arrange for disposal of contaminated load(s) within twenty-four hours of Contractor's request to so dispose or may reimburse Contractor at the current disposal rate at North Texas Municipal Water District landfill.

4.04 Maintenance of Facility. The Processing Facility floor shall be kept clear of buildup of materials, including but not limited to newspapers, in order to allow the safe backing of City vehicles into the receiving area. Contractor shall maintain the Processing Facility in a neat and orderly manner at all times.

4.05 Nuisance Abatement. Contractor shall take all reasonable precautions to prevent littering of materials and to prevent odors at the Facility (hereinafter "nuisance"). Contractor shall operate the Facility in a manner that will not create a nuisance. If either Contractor or City receives a complaint regarding a nuisance arising out of or related to Contractor's operations, Contractor shall respond within twenty-four (24) hours of receipt of such complaint. Contractor shall provide the Environmental Waste Services Superintendent a written explanation to each such complaint providing a detail of its investigation into the incident upon which the complaint was based ("Incident") and the actions that Contractor has taken to resolve the Incident including, when necessary, all future actions Contractor will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the satisfaction of the complainant within fifteen (15) days, Contractor shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to approval by City's Solid Waste Manager. If future action is necessary, Contractor shall include a schedule for completion of its plan to correct or prevent the incident, such schedule is subject to City approval. If Contractor determines that no action is necessary and this is not satisfactory to the complainant, Contractor must provide documentation to the City within (15) fifteen days of notice to the complainant so that City can make a determination as to what, if any, type of action by the Contractor is necessary. All complaints received from the public shall be recorded and the action taken documented as provided herein. The City's Environmental Waste Services Superintendent shall receive a copy of all documentation required by this paragraph for review.

4.06 Location of Facility. City's selection of Contractor's services for Processing of Recyclables has been based largely upon the location of Contractor's Facility and the cost effectiveness of that location for City's Recycling program. Should Contractor close or move its Facility to a location outside of the City of Plano, City would incur additional costs for its Recycling operation. Therefore, if at any time during the term or any renewals of this Agreement, Contractor intends to close or move the Processing Facility, the new location of the alternative Processing Facility must be provided to City in writing at least ninety (90) days prior to the date of closing or the date of the move, and such new location must be acceptable to City. If City determines that the new location is unacceptable, in that the new location would increase City's collection and transportation costs, City and Contractor agree to re-negotiate Processing Fees under this Agreement during the ninety (90) day notice period. City agrees to negotiate in good faith; however, if the parties cannot reach an agreement, City may terminate this Agreement without penalty.

V.
MATERIALS PROCESSED / MARKETING

5.01 Recyclable Materials. City shall deliver all residential Recyclable Materials collected by City or its contractors to the Processing Facility. Contractor shall process all residential Recyclable Materials collected by City. Processing shall include all necessary steps and actions to prepare Recyclables for market, including actual sale of such Recyclables, excluding residuals not able to be captured by separation. Title to all Recyclables shall pass to Contractor when such Recyclables are unloaded at the Processing Facility.

5.02 Marketing. The parties hereto understand that the market for Recyclable Materials may fluctuate throughout the term of this Contract. The term "market" shall mean any market including but not limited to local, state, national, and international markets regardless of whether a profit is made. If for three consecutive months, the market price for any one or more of the Recyclables drops to the point that any or all of the Materials can no longer be sold, whether with or without a profit, City shall, at its option:

- (a) Remove one or more of such Materials from City collection;
or
- (b) After Processing by Contractor, contract with a third party to transport and store the Materials; or
- (c) After Processing by Contractor, contract with a third party to transport and dispose of the Materials; or
- (d) After Processing by Contractor, utilize any other market for the Materials; or
- (e) Divert newspapers to City's composting operation; or
- (f) After Processing by Contractor, in the event that the market price for any one or more of the Recyclables is \$0.00 or negative so that marketing of the Materials would cause the Contractor to incur costs, City will pay the actual market cost for each respective commodity. No fees or charges, other than Processing Allowances, will be paid.

Contractor shall continue to Process Materials as long as City continues to pay Contractor the Processing Allowances, regardless of the profitability of such Processing. Except as otherwise provided herein, Contractor shall, throughout the term of this Agreement, continue to transfer materials to end markets.

Deduction of Processing Allowances shall be full compensation to Contractor for Processing services. If at any time during the term of this Contract, the market for Recyclables is such that Processing Allowances cannot be fully deducted from Gross Revenues, thereby obligating the City to pay Contractor Processing Allowances, payment of Processing Allowances or any other fees by City shall not exceed \$80,000 during any fiscal year of City. If payment to Contractor exceeds \$80,000 during a fiscal

year of the City, Contractor may elect to waive Processing Allowances or this Contract shall terminate.

5.03 Materials Processed. If at any time during the term of this Agreement, City desires to add or remove materials from Processing, the parties shall in good faith negotiate the proposed addition or removal of recyclable materials and any increase or decrease of Processing Allowances.

VI. CONSIDERATION

6.01 Percentage of Revenue. In consideration of City's delivery of Recyclable Materials at no cost to Contractor for subsequent Processing and sale by Contractor, Contractor shall pay City 80% of Net Revenues. Contractor shall receive 20% of Net Revenues. Contractor shall make payment to City one time per month beginning thirty (30) days after the effective date of this agreement. Payment shall be made to City by the 15th of each month. After the 25th of each month, interest shall accrue at the maximum rate allowed by law.

6.02 Calculation of Revenues for Commingled Recyclables. Because Commingled Recyclables consist of a variety of different types of recyclable commodities for which market demand and market price vary and because the amount of revenue generated under this agreement is determined by the market price obtained for each commodity, the method for determining the amount of revenue paid for Commingled Recyclable Materials shall be based upon the proportionate share of each individual commodity. In order to determine the appropriate calculation of revenues for Commingled Recyclable Materials, Contractor shall conduct a quarterly analysis as described in Paragraph 6.03. Based on the results of the analysis, Contractor shall determine the percentage of total tonnage attributable to each commodity provided by City's Recyclables. The percentage of total tonnage attributable to a commodity shall be multiplied times the respective market price for such commodity. The total value of the market price for each commodity shall be added together to determine the total amount of Gross Revenues received by Contractor for Commingled Recyclable Materials.

6.03 Analysis of Commingled Materials. Contractor shall determine the percentage of tons of Commingled Materials attributable to each Recyclable Material collected by City. In order to make such determination, a sort shall be conducted on a quarterly basis. Contractor shall sort by individual commodity the materials contained in a minimum of four loads from the City's recycling trucks on a predetermined day of the week. After sorting from all designated loads, the weight of each commodity shall be documented and used to determine the percentage of total Commingled tonnage attributable to each such commodity for the following quarter. The weight of the "overs" trash material will be reduced by an agreed upon percentage based on the percentage of recyclable materials that would be reprocessed and removed under normal operations.

VII.
PROCESSING ALLOWANCE INCREASE

7.01 Request. Processing Allowances shall be adjusted annually by the net percentage of increase or decrease in the Consumer Price Index for Urban Wage Earners and Clerical Workers, Dallas – Fort Worth metropolitan area (“CPI-W”) by the Bureau of Labor Statistics of the United States Department of Labor, or any successor governmental agency, between the date of the last such adjustment or the date of execution of this contract (in the case of the first such adjustment) and the date such an adjustment is made by Contractor. In no event shall any increase in Processing Allowances exceed 3.5% for any given year.

VIII.
TOURS

Contractor shall provide educational tours to any Plano organization or group on an appointment basis. The City may request tours outside of the normal educational tours and such tours shall be conducted by the Contractor on behalf of the City.

IX.
PERFORMANCE BOND

Contractor shall furnish a performance bond to the City guaranteeing Contractor’s faithful performance of the contract. The performance bond shall be in the amount of **TWO MILLION DOLLARS AND NO/100 (\$2,000,000.00)** and shall be valid for the term of this contract. The premium for such bond shall be paid by Contractor. A certificate from the surety company showing that the bond premiums are paid in full shall accompany the bond. The surety on the bond shall be duly authorized to issue bonds within the State of Texas and shall provide an original Power of Attorney evidencing the authority of persons signing the bond on behalf of surety.

X.
AUDITS AND RECORD KEEPING

10.01 Right to Audit. Audits shall be conducted at the discretion of City. Contractor agrees that City shall, until the expiration of three (3) years after each payment to City under this contract or after termination of this Contract, whichever occurs last, have the right to examine any pertinent books, documents, papers and records of Contractor involving transactions relating to this contract. Contractor agrees that City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Contractor at least seven (7) days advance notice of intended audits. City shall pay costs incurred for the auditing services of a third party and for City staff involved in the audit; however, under no circumstances will City pay any out of pocket expenses incurred by Contractor. All marketing information shall be deemed proprietary and confidential but shall be

available to City for audit purposes. Accordingly, unless otherwise required by law or court order, City shall not disclose such information to any third party.

10.02 Record Keeping. Contractor shall maintain detailed records and files on the weight of each material processed, its market destination, buyer, price paid, revenue generated and other appropriate information, including any written agreements with brokers or purchasers of the Recyclable Materials. In addition to providing information pursuant to the audit provisions of this agreement, Contractor shall provide proof of transfer of Materials to end markets upon request of City. Upon request, Contractor shall submit to City an annual audit financial statement detailing revenue along with the supporting schedule(s) from which the figures and other information on such statement was derived. All marketing information shall be deemed proprietary and confidential but shall be available to City for audit purposes. Accordingly, unless otherwise required by law or court order, City shall not disclose such information to any third party.

10.03 Production of Documentation. Within fourteen (14) business days of City's request for documentation, Contractor shall submit to City all such requested documentation.

10.04 Interest. If as a result of its audit, City determines that Contractor has failed to pay the full amount of money due under the terms of this Contract, Contractor shall pay all such amounts, including interest thereon, in full, within ten (10) days of demand by City. Interest shall accrue at the maximum rate allowed by law and shall begin accruing from the time that such moneys were initially due and payable to City under the terms of this Contract.

XI.

PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall comply with all safety rules and policies for the Processing Facility. Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the Facility and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

XII.

FORCE MAJEURE/LOSSES FROM NATURAL CAUSES

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, which directly and substantially affects its ability to perform the obligations of this agreement, then such party shall be excused from performance hereunder for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence. Notwithstanding the foregoing, in the event of a work stoppage or strike which directly

and substantially interferes with Contractor's performance under this Contract, Contractor shall take all reasonable steps to continue to provide services as required hereunder during the work stoppage or strike.

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, from the action of the elements, from any unforeseen circumstances in the prosecution of the same, from unusual obstructions or difficulties which may be encountered in the prosecution of the work, or from any of the causes listed in this paragraph, shall be sustained and borne by the Contractor at its own cost and expense.

XIII. INDEMNIFICATION

13.01 THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

13.02 CONTRACTOR AGREES TO RELEASE, DEFEND, INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED BY CONTRACTOR IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN SO DESIRED BY CITY, CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE

HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. IF CONTRACTOR FAILS TO DO SO TO THE SATISFACTION OF THE CITY, AT CITY'S OPTION, IT MAY EITHER PAY DIRECTLY ANY UNPAID BILLS OF WHICH CITY HAS WRITTEN NOTICE OR WITHHOLD FROM CONTRACTOR'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY SUFFICIENT TO LIQUIDATE ANY AND ALL SUCH LAWFUL CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED, WHEREUPON PAYMENTS TO THE CONTRACTOR SHALL BE RESUMED IN FULL, IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT, BUT IN NO EVENT SHALL THE PROVISIONS OF THIS SENTENCE BE CONSTRUED TO IMPOSE ANY OBLIGATION UPON CITY BY EITHER CONTRACTOR OR ITS SURETY.

13.03 CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. COUNSEL SELECTED MUST BE REASONABLY ACCEPTABLE TO CITY. IF CONTRACTOR FAILS TO TENDER DEFENSE AND IDENTIFY COUNSEL IN WRITING WITHIN SEVEN (7) BUSINESS DAYS OF WRITTEN NOTICE OF THE SUIT OR CLAIM, THE CITY MAY RETAIN ITS OWN COUNSEL AT CONTRACTOR'S EXPENSE. IN ADDITION, THE CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

XIV.

COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times observe and comply with all applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work, and shall indemnify and save harmless City against any claim arising from the violation of any such laws, ordinances and regulations whether by Contractor or Contractor's employees, agents, subcontractors, or other third parties for whom Contractor is legally liable. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, Contractor shall bear all costs arising therefrom.

**XV.
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**XVI.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of all of its duties and obligations under this Contract. This Contract will not be assigned or sublet without the prior written consent of City, and no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

**XVII.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XVIII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance as set forth in **Exhibit "A"**, a copy of which is attached hereto and incorporated herein.

**XIX.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "B"**.

**XX.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. Provided however, if any paragraph, section, subdivision, sentence, clause, or phrase of this Contract which is material to the obligations of the parties hereunder, is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, either party may terminate this Contract by giving the other party thirty (30) days prior written notice.

**XXI.
TERMINATION**

City reserves the right to terminate this Contract pursuant to Paragraph II above or immediately upon breach of any term or provision of this contract by Contractor; or if at any time during the term of this contract, Contractor closes or moves the Processing Facility to a site unacceptable to City and parties fail to successfully renegotiate as provided in Section 4.06, or if Contractor fails to take action as required under Section 4.05, or if Contractor fails to take action to resolve a complaint under section 4.05 after having been directed in writing by City to take action to resolve such complaint; or if, except as expressly authorized under the terms of this Agreement, Contractor fails to transfer Recyclables to end markets, or if Contractor shall fail to commence the work in accordance with the provisions of this contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this contract, or fail to use an adequate number of personnel or equipment to complete the work or fail to perform any of its obligations under this contract, then City shall have the right, if Contractor shall not cure any such default after thirty (30) days written notice thereof, to terminate this contract and complete the work in any manner it deems desirable, including engaging the services of a third-party therefor. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City of the performance of the balance of the work is in excess of the amount that would have been paid to Contractor for such work under the terms of this contract, Contractor shall be liable for and shall reimburse City for such excess.

**XXII.
ENTIRE AGREEMENT**

This Contract and its attachments embodies the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XXIII.
CONTRACT INTERPRETATION**

Although this Contract is drafted by City, should any part be in dispute, the parties agree that the Contract shall not be construed more favorably for either party.

**XXIV.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XXV.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXVI.
NOTICE**

All notices, communications and reports required or permitted under this Contract, excluding routine reports and correspondence, shall be personally delivered or shall be sent by certified or registered mail, or hand delivered, to the respective representatives for the parties as designated below, unless and until either party is otherwise notified in writing by the other party of a change of address or designee. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

CITY OF PLANO:

**City of Plano
Sustainability & Environmental
Services Department
Attn: Nancy Nevil
4120 W. Plano Parkway
Plano, Texas 75093
(972) 769-4264 (Phone)
(972) 769-4172 (Fax)**

CONTRACTOR:

**Allied Waste Systems, Inc.
d/b/a Allied Waste Services of Plano
Attn: General Manager
Plano Recyclery
4200 E. 14th Street
Plano, Texas 75074
(972) 422-2341 (Phone)
(972) (972-881-9077 (Fax)**

**Attn:
Municipal Marketing Manager
4200 E. 14th Street
Plano, Texas 75074
(469) 443-7005 (Phone)
(972) 422-5683 (Fax)**

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

**ALLIED WASTE SYSTEMS, INC.
d/b/a Allied Waste Services of Plano**

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2010 by _____, _____ of **ALLIED WASTE SYSTEMS, INC. d/b/a Allied Waste Services of Plano**, a Delaware corporation, on behalf of such corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2010 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public in and for the
State of Texas

EXHIBIT "A"

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid.

A. Minimum Scope of Insurance

1. Coverage shall be at least as broad as ISO Commercial General Liability (CGL) occurrence from CG 00 01 or a substitute form providing equivalent coverage. "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance (or equivalent) including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Contractor shall maintain limits not less than:

1. Commercial General Liability: \$5,000,000 per occurrence and \$10,000,000 aggregate covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in business contract.
2. Automobile liability: \$5,000,000 each accident limit. A waiver of subrogation in favor of the City with respect to physical damaged shall be binding on Contractor.
3. Employer's Liability: Employer's Liability Limits of \$1,000,000 each accident, \$1,000,000 each employee by disease, and \$1,000,000 by disease policy limit.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of the negligent activities performed by or on behalf of Contractor, products and completed operations of Contractor, premises owned, occupied or used by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. Contractor's insurance coverage shall be primary

insurance as respects the City, its officers, officials, employees and volunteers with respect to the negligence of Contractor. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it to the extent of Contractor's negligence.

- b. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- c. Contractor's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from the negligence of Contractor.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

Insurance shall be placed with insurers with an A.M. Best's rating of no less than B+:VI, or A or better by Standard & Poors.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance evidencing coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

EXHIBIT "B"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of _____ and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of _____ is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Notary Public, State of _____

DATE: October 19, 2010
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of October 18, 2010

**AGENDA ITEM NO. 7 - PUBLIC HEARING
ZONING CASE 2010-17
APPLICANT: CITY OF PLANO**

Request to amend Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) and related sections of the Zoning Ordinance pertaining to unified-lot signs.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

STIPULATIONS:

Recommended for approval subject to the following: (Deletions are indicated in strikethrough text; additions are indicated in underlined text)

Amend Subsection 3.1602 (Definitions) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations).

Sign - Unified-lot	Any identification or multipurpose sign located on a premise consisting of two or more contiguous lots that the owner(s) has agreed to treat as one lot for the limited purpose of providing shared signage.
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Amend Subsection 3.1603 (Design and Construction Specifications) 2. (Freestanding Signs) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations).

(k) Unified-lot Signs

- i. Unified-lot signs may be erected in nonresidential zoning districts and shall comply with the all area, height, setback, spacing, and composition restrictions applicable to multipurpose signs for freestanding signs in Subsection 3.1603.
- ii. One Unified-lot signs ~~per street front~~ may be placed on a premise consisting of two or more contiguous lots where each lot owner has entered into a binding agreement to treat their separate lots as one lot for the limited

purpose of signage. The agreement shall contain a legal description of the properties subject to the agreement; ~~state that the parties, their heirs, and assigns forego any rights to additional freestanding street front signage on the premises covered by the agreement; state that the agreement is a covenant running with the land to be filed and made a part of the Deed Records of Collin or Denton County, Texas; and that the agreement cannot be amended or terminated without the consent of the Building Official.~~ A unified-lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.

- iii. ~~A unified-lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.~~
- iv. ~~Individual lots that are part of a unified-lot sign agreement shall not be entitled to any other freestanding street front signage.~~

CITY OF PLANO
PLANNING & ZONING COMMISSION

October 18, 2010

Agenda Item No. 7

Public Hearing: Zoning Case 2010-17

Applicant: City of Plano

DESCRIPTION:

Request to amend Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) and related sections of the Zoning Ordinance pertaining to unified-lot signs.

REMARKS:

On September 7, 2010, the Planning & Zoning Commission called a public hearing to consider amendments to the Zoning Ordinance pertaining to unified-lot signs.

A unified-lot sign is a street front sign that is placed on a premise consisting of two or more contiguous lots. The two or more contiguous lot owners enter into an agreement to treat their separate lots as one for the limited purpose of signage. The agreement foregoes rights to additional freestanding street front signage on the premises covered by the agreement and it runs with the land. A unified-lot sign agreement must be filed of record with Denton or Collin County and may not be amended without the city's permission.

A unified-lot agreement allows for a property within a larger retail development, for example, that does not have lot frontage on a street, to enter into an agreement with another contiguous property that does have street frontage, in order to allow the property without street frontage to have a sign along the street on the adjoining property. As part of this agreement, the property owners agree to limit themselves to this one, multi-purpose tenant sign and not have any additional freestanding signage.

The limitation to one sign under the current unified-lot sign regulations is a deterrent to redevelopment or reuse of vacant and other underutilized properties participating in a unified-lot agreement due to the sign restrictions. Retail property owners throughout the city have subdivided their properties and created pad sites along existing streets, leaving many existing businesses with no direct street visibility. Properties without direct visibility and that have no street signage lose their competitive edge over properties that are readily visible from the street that have street frontage and signage.

As such, current unified-lot sign regulations work well for undeveloped properties yet not so well for developed properties that lack street visibility.

Since additional freestanding signs could be installed and meet all setbacks and spacing requirements, staff recommends that the two or more lots under the unified-lot sign agreement be treated similarly as a single platted lot and allow the same current sign regulations that apply to single platted lots be applicable to properties participating in unified-lot agreement. That is, permit additional freestanding signs as is allowed on single platted lots, as long as the signage size, setbacks, and spacing requirements can be met.

Staff believes that allowing additional freestanding signs may facilitate redevelopment and reuse of vacant shopping centers and other underutilized properties. Therefore, staff recommends that lots under the unified-lot sign agreement be treated similarly as one platted lot and have the restriction regarding no additional freestanding signage on individual lots that are part of a unified-lot sign agreement be eliminated.

RECOMMENDATIONS:

Recommended for approval subject to the following: (Deletions are indicated in strikethrough text; additions are indicated in underlined text)

Amend Subsection 3.1602 (Definitions) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations).

Sign - Unified-lot	Any identification or multipurpose sign located on a premise consisting of two or more contiguous lots that the owner(s) has agreed to treat as one lot for the limited purpose of providing shared signage.
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Amend Subsection 3.1603 (Design and Construction Specifications) 2. (Freestanding Signs) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations).

(k) Unified-lot Signs

- i. Unified-lot signs may be erected in nonresidential zoning districts and shall comply with the all area, height, setback, spacing, and composition restrictions ~~applicable to multipurpose signs~~ for freestanding signs in Subsection 3.1603.
- ii. ~~One~~ Unified-lot signs per street front may be placed on a premise consisting of two or more contiguous lots where each lot owner has entered into a binding agreement to treat their separate lots as one lot for the limited purpose of signage. The agreement shall contain a legal description of the properties subject to the agreement; ~~state that the parties, their heirs, and assigns forego any rights to additional freestanding street front signage on the premises covered by the agreement; state that the agreement is a covenant~~

running with the land to be filed and made a part of the Deed Records of Collin or Denton County, Texas; and ~~that~~ the agreement cannot be amended or terminated without the consent of the Building Official. A unified-lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.

- iii. ~~A unified-lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.~~
- iv. ~~Individual lots that are part of a unified-lot sign agreement shall not be entitled to any other freestanding street front signage.~~

Zoning Case 2010-17

An Ordinance of the City of Plano, Texas, amending Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to unified-lot signs; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 8th day of November, 2010, for the purpose of considering a change in the Zoning Ordinance; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 8th day of November, 2010; and

WHEREAS, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Subsection 3.1602 (Definitions) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such portion of subsection to read as follows:

Section 3.1600 Sign Regulations

Subsection 3.1602 Definitions

Sign - Unified-lot

Any sign located on a premise consisting of two or more contiguous lots that the owner(s) has agreed to treat as one lot for the limited purpose of providing shared signage

Section II. Subsection 3.1603 (Sign and Construction Specifications) 2. (Freestanding Signs) of Section 3.1600 (Sign Regulations) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended, such portion of the subsection to read as follows:

Section 3.1600 Sign Regulations

Subsection 3.1603 Sign and Construction Specifications

2. Freestanding Signs

(k) Unified-lot Signs

- i. Unified-lot signs may be erected in nonresidential zoning districts and shall comply with the restrictions for freestanding signs in Subsection 3.1603.
- ii. Unified-lot signs may be placed on a premise consisting of two or more contiguous lots where each lot owner has entered into a binding agreement to treat their separate lots as one lot for the limited purpose of signage. The agreement shall contain a legal description of the properties subject to the agreement; the agreement is a covenant running with the land to be filed and made a part of the Deed Records of Collin or Denton County, Texas; and the agreement cannot be amended or terminated without the consent of the Building Official. A unified-lot sign agreement shall not be effective until a true and correct copy of the approved agreement is filed in the Deed Records of the applicable county and a file-marked copy is filed with the Building Official.

Section III. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section IV. The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section V. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 8TH DAY OF NOVEMBER, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11-8-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; providing for a real property tax abatement; and authorizing its execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: The real property improvement to be maintained is \$5,000,000.				
SUMMARY OF ITEM				
This is related to Capital One, National Association, a national banking association, request for tax abatement on reinvestment zone 111.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; providing for a real property tax abatement; and authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and Capital One, National Association, a national banking association, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Plano.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as “**City**” and Capital One, National Association, a national banking association hereinafter referred to as “**Owner**.”

WITNESSETH:

WHEREAS, on the 28th day of April, 2008, the City Council of the City of Plano, Texas, passed Ordinance No. 2008-4-43 establishing Reinvestment Zone No. 111, for commercial/industrial tax abatement, hereinafter referred to as the “**Ordinance**,” as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as “**Act**”; and

WHEREAS, the City has adopted a revised policy statement for Tax Abatement by Resolution No. 2009-9-21(R) stating that it elects to be eligible to participate in tax abatement (the “**Policy Statement**”); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 111 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT “A”** (the “**Real Property**”) and the Improvements as shown on **EXHIBIT “B”** thereon (the “**Development**”) attached hereto and made a part hereof.

JOBS

2. The Owner estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in approximately 200 full-time jobs at the Development when the new office building is completed.

IMPROVEMENTS

3. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) consisting primarily of new buildings consisting of a total of not less than 135,000 square feet of office space with a Taxable Value of not less than **Five Million Dollars (\$5,000,000)** on or before March 31, 2012 subject to an event of Force Majeure. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in Plano. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano. The term "Taxable Value" shall mean the assessed value for ad valorem tax purposes as determined by the Collin County Appraisal District.

4. The Owner agrees and covenants that they will in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof.

5. The Owner agrees and covenants that they shall occupy not less than 135,000 square feet of office space on the Real Property and they or their affiliates shall employ thereon approximately 200 full time jobs, referred to herein as the "Purposes."

DEFAULT

6. Any of the following events shall be deemed a breach of this agreement resulting in default:

- (a) The Improvements are not completed in accordance with this Agreement;
- (b) Owner allows their real property taxes owed the City on the Real Property Improvements to become delinquent or fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Owner fails to occupy the Improvements for the Purposes set forth in paragraph 5 above on or before March 31, 2012 or

(d) The Taxable Value of the Improvements to the Property on or before January 1, 2012 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraph 3 above; or

(e) Owner fails to employ at least 75% of their employee commitment on or before July 1, 2012 as provided in paragraph 2 above;

(f) Owner fails to provide annual certification as required in paragraph 9 below;
or

(g) Owner or Lessee has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens.

7. In the event that the Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City; provided, however, that such 30 day period shall be extended if the default is of a nature that cannot be cured within such 30-day period and Owner is diligently pursuing such remedy. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 6(b) or 6(g) above and if Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

8. Upon the occurrence of an event of default under Paragraph 6(b) above or upon the occurrence of an event of default under Paragraph 6(g), then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within forty-five days (45) days of said written notice, this Agreement may be terminated by the City and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

9. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT “C”** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

10. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

(a) Assignment to an affiliate of Owner is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Owner shall continue to conduct business on the subject premises.

However, Owner agrees to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, a portion of ad valorem real property taxes from the Real Property Improvements otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to the Real Property Improvements as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City's abatement shall be based on amounts equal to fifty percent (50%) of the improved value of the Real Property Improvements for each tax year from January 1, 2012, through December 31, 2021.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property Improvements and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

|

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice to:

Capital One, National Association
Attention: Chief Counsel - Contracts
1680 Capital One Drive
McLean, Virginia 22102

Capital One, National Association
Corporate Real Estate
Attention: Ms. Sandy Garber
15000 Capital One Drive
Richmond, VA 23238

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

13. The Owner further agrees that the City, its agents and employees, upon prior written notice of Owner and provided that Owner shall accompany City, shall have reasonable right (upon reasonable prior notice to Owner) during construction to access the Real Property to inspect the Improvements in order to insure that the construction of the Improvements are in accordance with

this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, City shall have the continuing right (upon reasonable prior notice to Owner) to inspect the Real Property to insure that the Real Property is thereafter maintained, operated and occupied in accordance with this Agreement.

14. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties.

15. The City represents and warrants that the Real Property Improvements do not include any property that is owned by a member of its governing body.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 8th day of November, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by an officer of Owner authorized to execute this Agreement on behalf of Owner.

18. This instrument shall constitute a valid and binding agreement between the City and Owner when executed.

19. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this _____th day of _____, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

By: _____

Daniel R. Mortensen
Senior Vice President
Facilities Management/Real Estate

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 111
Real Property
Metes and Bounds

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, and the Collin County School Land Survey, Abstract No. 153, in the City of Plano, Collin County, Texas, being a part of that tract of land described as Tract 3B in deed to West Plano Land Company, L.P., as recorded in Collin County Clerk's File No. 20060920001358250, Land Records of Collin County, Texas (L.R.C.C.T.), and being all of Lot 3, Block 1 of Capital One Addition Lots 3 & 4, Block 1, an Addition to the City of Plano as recorded in Volume 2007, Page 269-270, L.R.C.C.T., and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a yellow plastic cap stamped "Halff Assoc., Inc." (hereafter referred to as "with cap") found at the southwest corner of a tract of land described in deed to McAfee, Inc., recorded in Collin County Clerk's File No. 20060703000911570, L.R.C.C.T., and being on the north line of Lot 4, Block 1 of said Capital One Addition;

THENCE North 64 degrees 39 minutes 06 seconds East, with the southeast line of said McAfee tract, and the north line of said Lot 4, passing at a call distance of 196.54 feet the southeast corner of said McAfee tract, also being the southwest corner of Network Associates, an addition to the City of Plano according to the plat thereof recorded in Cabinet O, Page 322, of the Map Records of Collin County, Texas (M.R.C.C.T.), and continuing along the southeast line of said Network Associates addition, for a total distance of 430.07 feet to a 1/2-inch iron rod with cap set at the westerly most corner of said Lot 3 for THE POINT OF BEGINNING;

THENCE North 64 degrees 39 minutes 06 seconds East, continuing along the southeast line of said Network Associates addition and along the north line of said Lot 3, a distance of 713.02 feet to 5/8-inch iron rod with a cap stamped "Kimley-Horn Assoc., Inc" found on the west right-of-way line of Preston Road (State Highway 289 – variable width right-of-way) for the beginning of a non-tangent curve to the left with a radius of 3,369.35 feet and a chord bearing South 30 degrees 56 minutes 44 seconds East, a distance of 681.56 feet;

THENCE Southeasterly along said west right-of-way line and with said curve to the left, through a central angle of 11 degrees 36 minutes 35 seconds, an arc distance of 682.73 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 29 degrees 32 minutes 01 second East, continuing along said west right-of-way line, a distance of 86.81 feet to a 1/2-inch iron rod with cap set for the beginning of a non-tangent curve to the left with a radius of 3,381.35 feet and a chord bearing South 39 degrees 18 minutes 40 seconds East, a distance of 129.32 feet;

THENCE Southeasterly along said west right-of-way line and with said curve to the left, through a central angle of 02 degrees 11 minutes 29 seconds, an arc distance of 129.33 feet to a 1/2-inch iron rod with cap set for the southeast corner of said Lot 3 and on the north line of Lot 2, Block 1

of Capital One Addition, Lots 1, 2 & 3, Block 1, an addition to the City of Plano, recorded in Volume 2007, Page 122, L.R.C.C.T.;

THENCE South 47 degrees 12 minutes 12 seconds West, departing said west right-of-way line and along the common line between said Lots 2 and 3, a distance of 992.02 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 37 degrees 29 minutes 43 seconds West, continuing along said common line, a distance of 63.29 feet to a 5/8-inch iron rod with aluminum cap stamped "City of Plano Monument" set for corner on the east right-of-way line of Dominion Parkway (a proposed 92 foot wide right-of-way), and being on a non-tangent curve to the left with a radius of 1,446.00 feet and a chord bearing North 64 degrees 04 minutes 15 seconds West, a distance of 583.54 feet;

THENCE Northwesterly along said east right-of-way line and with said curve to the left, through a central angle of 23 degrees 16 minutes 54 seconds, an arc distance of 587.57 feet to a 1/2-inch iron rod with cap set for corner, said point being the southwesterly corner of said Lot 3 and the southeasterly corner of said Lot 4;

THENCE North 17 degrees 12 minutes 12 seconds East, departing said east right-of-way line and along the common line between said Lots 3 and 4, a distance of 870.25 feet to a 1/2-inch iron rod with cap set for corner;

THENCE North 42 degrees 47 minutes 48 seconds West continuing along said common line, a distance of 126.18 feet to the POINT OF BEGINNING AND CONTAINING 1,082,487 square feet or 24.850 acres of land, more or less.

EXHIBIT "B"
THE DEVELOPMENT (Phase III)
REINVESTMENT ZONE NO. 111

Site Plan/Map of Project

Preston Road



EXHIBIT "C"
CERTIFICATION FORM (Phase III)
REINVESTMENT ZONE NO. 111

This letter certifies that Capital One National Association is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of November 1, 20____. The term of this agreement is January 1, 2012 through December 31, 2021. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

By: _____

Daniel R. Mortensen
Senior Vice President
Facilities Management/Real Estate

Date

NOTE: This certification form should be mailed to:

**City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358**



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11-8-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; authorizing its execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,578,710	0	12,578,710
Encumbered/Expended Amount	0	-4,503,225	-4,611,650	-9,114,875
This Item	0	-100,000	-300,000	-400,000
BALANCE	0	7,975,485	-4,911,650	3,063,835
FUND(s): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Capital One for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Capital One agrees to occupy not less than 135,000 sq. ft of commercial space by 3/31/12 and create or transfer 200 jobs on or before 6/1/12.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national banking association; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Capital One, National Association, a national banking association, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE**
 § **AGREEMENT**
COUNTY OF COLLIN §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Capital One, National Association, (hereinafter referred to as the (“Company”)), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is a full service bank providing a broad spectrum of financial products and services to consumers, small businesses and commercial clients with plans to construct real property improvements with an initial expenditure of not less than Fifteen Million Dollars (\$15,000,000.00) or a taxable value of not less than Five Million Dollars (\$5,000,000.00) in the City of Plano and anticipated to expend not less than Four Million (\$4,000,000.00) on Business Personal Property ; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to maintain and expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, Company will construct and occupy not less than 135,000 square feet of commercial office space in Building 3 at Capital One’s campus located at 7941 Preston Road, Plano, Texas, 75024 (the “Property”); and add 200 Job Equivalent positions to the Property; and

WHEREAS, the occupancy of 135,000 square feet of office space (the “Improvements”) and the creation or transfer of 200 new FTE positions will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Commencement Date” shall mean the completion of construction of Phase 3 or March 31, 2012, whichever occurs first.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in Plano.

“Job Equivalent” shall mean one or more job positions (at the Company or one of its affiliates) assigned to the Property which individually or when combined total 2080 hours annually. For purposes of this Agreement, Job Equivalents shall not include the 1,200 Job Equivalents from Company’s Phases I and II adjacent to the Property that were required with the prior agreements.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue for ten (10) years thereafter.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- a. construct new commercial office space of 135,000 square feet on the Property on or before March 31, 2012;
- b. Create or transfer 200 Job Equivalents to the Property on or before July 1, 2012;

- c. Maintain the 200 Job Equivalents for which a grant was paid pursuant to this Agreement for the remainder of the term of this Agreement; and

Article IV
Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company the following incentives:

- a. A cash grant of up to One Hundred Thousand Dollars (\$100,000.00) for the reimbursement of permit, building inspection, engineering and planning fees paid to the City by Company for the construction of the Improvements on the Property. Such grant shall be payable by the City within thirty (30) days of request thereof but not later than October 1, 2012.

- b. A cash grant of One Hundred and Twenty Thousand Dollars (\$120,000.00) from the City under this Agreement payable within thirty (30) days after the City's receipt of the Initial Certification substantially in the form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article III (a) and (b) above (such payment referred to as the "Initial Grant Payment"). **IN ORDER TO RECEIVE PAYMENT UNDER THIS AGREEMENT, COMPANY'S INITIAL CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE III a AND b ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE OCTOBER 1, 2012.**

- c. The Company shall be entitled to a second grant payment ("Additional Grant Payment") equal to Six Hundred Dollars (\$600.00) times the additional Job Equivalents, in excess of 200, assigned to the Property before March 31, 2014 and maintained for the remaining term of the Agreement. Such Additional Grant Payment shall not exceed One Hundred and Eighty Thousand Dollars (\$180,000.00). Payment shall be made thirty (30) days after receipt of the verification substantially in the form of the Verification attached hereto as Exhibit "A" **IN ORDER TO RECEIVE THE ADDITIONAL GRANT PAYMENT, COMPANY'S CERTIFICATION AS TO THE NUMBER OF JOB EQUIVALENTS CREATED PRIOR TO MARCH 31, 2014 MUST BE FILED WITH THE CITY ON OR BEFORE JULY 1, 2014.**

4.02 **Refunds.**

- a. In the event the Company fails to perform its obligations as set forth in Article III (a) for the full term of this Agreement, Company shall, as liquidated damages, refund to the City the full amount of this grant. In the event the Company, allows the Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received a grant payment, for more than one hundred eighty (180) consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Eight Hundred Dollars (\$800.00) for each Job Equivalent below the Job Equivalent level for which it received a grant payment. The repayment required of Company may not exceed Four Hundred Thousand Dollars (\$400,000.00) in the aggregate. For purposes of determining whether the City is due a refund under this section, an officer of the Company shall certify to the City by January 31, 2013 and by January 31st of each year thereafter during the term of this Agreement the actual number of Job Equivalents at the Property for the preceding calendar year, using the

Certification form substantially in the form of the attached as Exhibit "B". All refunds under this Agreement shall be due within sixty (60) days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

b. In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01 but without the addition of penalty. Repayment of grant funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Company of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

- a. By mutual written agreement of the parties;
- b. Upon expiration of the Term;
- c. By either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- d. By either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection d.

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations under Section 4.01 above shall survive the termination of this Agreement.

Article VI
Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:

City of Plano, Texas
Attn: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:

City of Plano, Texas
Attn: Diane Wetherbee
City Attorney
1520 Avenue K
Plano, Texas 75086-0358

If intended for the Company:

Capital One, National Association
Attention: Chief Counsel - Contracts
1680 Capital One Drive
McLean, Virginia 22102

With a copy to:

Capital One, National Association
Attention: Mr. Sandy Garber
15000 Capital One Drive
Richmond, Virginia 23238

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for

mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home
rule municipal corporation

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

BY: _____
Daniel R. Mortensen
Senior Vice President Facilities
Management/Real Estate

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that CAPITAL ONE, NATIONAL ASSOCIATION has occupied not less than 135,000 square feet of commercial space in Building III on the Property and has added _____ new Job Equivalent positions to the Property. CAPITAL ONE, NATIONAL ASSOCIATION, is in compliance with subsections (__) of Article III of the Agreement and is entitled to receive payment under the terms of that Agreement.

ATTEST: CAPITAL ONE,
NATIONAL ASSOCIATION, a national
banking association

BY: _____
Daniel R. Mortensen
Senior Vice President Facilities
Management/Real Estate

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

*This form may be modified as appropriate to certify payment for the Additional Grant Payment.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that CAPITAL ONE, NATIONAL ASSOCIATION , is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is March 31, 2012 through March 30, 2022. The number of new Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below _____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

BY: _____
Daniel R. Mortensen
Senior Vice President Facilities
Management/Real Estate

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11-8-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas Corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,578,710	0	12,578,710
Encumbered/Expended Amount	0	-4,503,225	-4,611,650	-9,114,875
This Item	0	-132,000	-108,000	-240,000
BALANCE	0	7,943,485	-4,719,650	3,223,835
FUND(s): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Futurewei Technologies, Inc., for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Futurewei Technologies, Inc. agrees to occupy not less than 35,000 sq. ft of office space and retain or create 110 jobs on or before 5/1/11. Futurewei Technologies may, but is not obligated, to add up to 90 additional jobs by 12/31/13.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas Corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas Corporation, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Agreement”); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Futurewei Technologies, Inc., d/b/a Huawei Technologies (USA), a Texas Corporation, (hereinafter referred to as the (“Company”), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is engaged in the business of design and development of telecommunications equipment as well as, sales and marketing of its product lines; and

WHEREAS, the Company plans to add taxable value of \$1,250,000.00 of real property improvements to the Property (defined below) and taxable value of \$500,000.00 of business personal property to the Property to be added to \$445,000 of existing business personal property; and maintain \$445,000 existing BPP for a total of \$945,000.

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to maintain and expand its business and commercial activities and national headquarters in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, Company agrees to occupy no less than 35,000 square feet of office space located at 5340 Legacy Drive, Building 3, Plano, TX 75024; retain or create 110 Job Equivalent positions (as hereinafter defined) on the Property by May 1, 2011 or other locations in the City of Plano as approved by the parties in writing; and with an opportunity to add up to an additional 90 Job Equivalents on the Property by December 31, 2013; and

WHEREAS, the occupancy of no less than 35,000 square feet of office space, the retention or creation of 110 full time employees, and the opportunity to add an additional 90 full time job positions to the Property will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Commencement Date” shall mean May 1, 2011.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in Plano. An economic downturn is not an Event of Force Majeure.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours annually. A Job Equivalent position for the purposes of this Agreement shall not include any Company job positions maintained at 5700 Tennyson Parkway, Plano, Texas.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue until April 30, 2018, unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 35,000 square feet of office space at 5340 Legacy Dr., Building 3, Plano, TX 75024 (hereafter the “Property”) on or before May 1, 2011;
- (b) Retain or create 110 Job Equivalents on the Property or other locations in the City of Plano as approved by the parties in writing (“Other Locations”) on or before

May 1, 2011. The term 'Other Locations' shall not include the property located at 5700 Tennyson Parkway, Plano, Texas;

- (c) The Company may but is not obligated to add additional Job Equivalent positions to the Property or Other Locations up to a maximum of 90 additional Job Equivalents (200 combined total) by December 31, 2013 and receive a grant payment as set forth in Article IV below;
- (d) Occupy no less than 35,000 square feet of office space on the Property and maintain all Job Equivalent positions on the Property or Other Locations, for which a grant payment was received, for the full term of this agreement;
- (e) Retain during the term of this agreement Plano as the designated U.S. Headquarters for the Company; and
- (f) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant of One Hundred and Thirty Two Thousand Dollars (\$132,000.00) for the occupancy of no less than 35,000 square feet of office space on the Property or Other Locations and the retention or creation of 110 Job Equivalent positions on the Property or Other Locations by the Commencement Date and a separate cash grant of One Thousand Two Hundred Dollars (\$1,200.00) for each additional new Job Equivalent position created on the Property or Other Locations by December 31, 2013 up to a maximum of 90 Job Equivalents (200 combined total). The combined total of all grant payments paid under this Agreement shall not exceed Two Hundred and Forty Thousand Dollars (\$240,000.00).

4.02 **Grant Payments.** Except as otherwise indicated, the Company shall be entitled to a payment of One Hundred and Thirty Two Thousand Dollars (\$132,000.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City using the Initial Certification form attached hereto as Exhibit "A" that the Company has met its obligations as set forth in Article III (a) and (b) above. **In order to receive payment under this Agreement, Company's initial certification verifying compliance with Article III (a) and (b) above must be filed with the City no later than August 1, 2011. Failure to certify by August 1, 2011 will void this Agreement without further notice.** After complying with Article III (a) and (b), the Company shall be entitled to additional payments of One Thousand Two Hundred Dollars (\$1,200.00) for each additional Job Equivalent created on the Property or Other Locations up to a maximum of One Hundred and Eight Thousand Dollars (\$108,000.00) within thirty (30) days after the Company verifies to the City the creation of these Job Equivalents using the Initial Certification attached hereto as Exhibit "A" modified as necessary. **Certifications for additional Job Equivalents may not be filed in increments of less than twenty-five jobs. In**

order to receive payment for additional Job Equivalents created under Article III (c) the Company's certification for those additional Job Equivalents must be filed with the City no later than April 1, 2014.

4.03 Refunds.

(a) In the event the Company allows Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received a grant payment for more than 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Two Hundred Dollars (\$1,200.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer or other Company Officer shall certify to the City by January 31, 2012 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

**Article V
Termination**

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the Term;
- (c) By either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such thirty (30) day period shall be extended if the default is of a nature that cannot reasonably be cured within such thirty (30) day period and further provided that the remedy is being diligently pursued); and
- (d) By either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
Plano, Texas 75086-0358

If intended for the Company before relocation:
Futurewei Technologies, Inc.
Attention: Ms. Christie Daniels
Office Administrator
1700 Alma Drive, Suite 100
Plano, Texas 75075

If intended for the Company after relocation:
Futurewei Technologies, Inc.
Attention: Ms. Christie Daniels
Office Administrator
5340 Legacy Drive
Building 3
Plano, TX 75093

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck, CITY
MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

FUTUREWEI TECHNOLOGIES, INC.
d/b/a HUAWEI TECHNOLOGIES (USA),
a Texas Corporation

BY: _____
Charles Ding
Co-President

EXHIBIT "A"

**INITIAL CERTIFICATE OF COMPLIANCE
FOR PROPERTY LOCATED AT
5340 Legacy Drive, Building 3, Plano, TX 75024**

I hereby certify that FUTUREWEI TECHNOLOGIES, INC. d/b/a HUAWEI TECHNOLOGIES (USA), a Texas Corporation , has occupied not less than 35,000 square feet of office space on the Property or Other Location and has retained or created _____ Job Equivalent positions to the Property. FUTUREWEI TECHNOLOGIES, INC. d/b/a HUAWEI TECHNOLOGIES (USA) is in compliance with [subsections (a) and (b)] or [subsection c] of Article III of the Agreement as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

FUTUREWEI TECHNOLOGIES, INC.
d/b/a HUAWEI TECHNOLOGIES (USA),
a Texas Corporation

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

**ANNUAL CERTIFICATE OF COMPLIANCE
FOR PROPERTY LOCATED AT
5340 Legacy Drive, Building 3, Plano, TX 75024**

I hereby certify that FUTUREWEI TECHNOLOGIES, INC. d/b/a HUAWEI TECHNOLOGIES (USA), a Texas Corporation is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is May 1, 2011 through April 30, 2018. The number of new Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below _____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance." If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

FUTUREWEI TECHNOLOGIES, INC.
d/b/a HUAWEI TECHNOLOGIES (USA),
a Texas Corporation

By: _____
Name:
Chief Financial Officer

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11-8-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Telect, Inc., a Washington Corporation; authorizing its execution by the City Manager or his designee and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,578,710	0	12,578,710
Encumbered/Expended Amount	0	-4,503,225	-4,611,650	-9,114,875
This Item	0	-87,500		-87,500
BALANCE	0	7,987,985	-4,611,650	3,376,335
FUND(s): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Telect, Inc. for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Telect, Inc. agrees to occupy not less than 100,000 sq. ft of commercial space and transfer or create 125 jobs on or before 12/31/10.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Telect, Inc., a Washington Corporation; authorizing its execution by the City Manager or his designee and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, and Telect, Inc., a Washington corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Telect, Inc., a Washington Corporation, (hereinafter referred to as the (“Company”)), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is currently located in Plano, Texas, and engaged in the business of developing, manufacturing, and servicing innovative connectivity products for the data and telecommunications industries; and

WHEREAS, the Company plans to move to another location in Plano and add real property taxable value of \$1,500,000.00 and to retain \$6,500,000.00 business personal property taxable value; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate and maintain and expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, Company intends to occupy approximately 100,000 square feet of commercial space located at 1801 10th Street, Plano, Texas (the “Property”) on or before the Commencement Date as defined below, and to transfer, retain or create at least 125 full time job equivalent positions on the Property; and

WHEREAS, the occupancy of 100,000 square feet of commercial space and the creation, retention or transfer of a minimum of 125 full time jobs on the Property will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Commencement Date” shall mean the occupancy of the Property but not later than December 20, 2010.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in Plano.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours annually.

Article II Term

The term of this Agreement shall be for a period of seven (7) years to run from the Commencement Date, unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 100,000 square feet of commercial space on the Property on or before the Commencement Date;
- (b) Transfer or create 125 Job Equivalents on the Property on or before December 31, 2010;
- (c) Maintain all 125 Job Equivalents on the Property for the remainder of the term of this Agreement; and

(d) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV
Economic Development Grant

4.01. **Grant.** In consideration of the Company successfully fulfilling the obligations as set forth in Article III above, the City agrees to provide the Company a one-time cash grant of Eighty Seven Thousand Five Hundred Dollars (\$87,500.00). The Company agrees to maintain all 125 Job Equivalents on the Property throughout the term of this Agreement as provided in Section 4.03 below.

4.02. **Grant Payments.** The Company shall be entitled to a payment of Eighty Seven Thousand Five Hundred Dollars (\$87,500.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City, using the Initial Certification form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article III (a) and (b) above (such payment referred to as the "Initial Grant Payment"). IN ORDER TO RECEIVE PAYMENT UNDER THIS AGREEMENT, COMPANY'S INITIAL CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE III (A) AND (B) ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE APRIL 1, 2011.

4.03. **Refunds.** In the event the Company allows Job Equivalents at the Property to fall below 125 for more than one hundred eighty (180) consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Seven Hundred Dollars (\$700.00) for each lost Job Equivalent. For purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2012, and by January 31st of each year thereafter during the term of this Agreement the actual number of Job Equivalents at the Property for the preceding calendar year, using the Certification form attached as Exhibit "B". All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. Notwithstanding the foregoing, the sole and exclusive remedy of the City for any failure by the Company to maintain the Job Equivalents on the Property pursuant to Section 3.01 above, shall be to receive a refund of the applicable portion of the Grant as determined in accordance with the terms of this Section 4.03.

4.04. **Undocumented Workers.** In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01 but without the addition of penalty. Repayment of grant funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Company of the conviction.

Article V
Termination

5.01. This Agreement terminates upon any one or more of the following:

(a) By mutual written agreement of the parties;

(b) Upon expiration of the Term;

(c) By either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and

(d) By either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02. **Effect of Termination.** The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01. **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03. **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas

Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
Plano, Texas 75086-0358

If intended for the Company prior to relocation:
Telect, Inc.,
Attention Tom Potter, Director, Global Operations
3100 E. Plano Parkway
Plano, Texas 75074

If intended for the Company after relocation:
Telect, Inc.
Attention Tom Potter, Director, Global Operations
1801 10th Street
Plano, Texas 75074

With a copy to:
Telect, Inc.
Attention: LauraLee Johnson
Contracts Manager
1730 North Madson Street
Liberty Lake, Washington 99019

6.05. **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07. **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09. **Recitals.** The recitals to this Agreement are incorporated herein.

6.10. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12. **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this _____ day of _____, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

TELECT, INC., a Washington Corporation

By: _____

By: _____
Stanley E. Hilbert
Executive Vice President & CFO

EXHIBIT "A"

CERTIFICATE OF COMPLIANCE*

I hereby certify that Telect, Inc., has hired/transferred/retained 125 Job Equivalents on the Property and is in compliance with each applicable term as set forth in Article III (a) and (b) of the Economic Development Agreement approved by the City Council on _____ as of _____(date), and is entitled to receive payment under the terms of the Agreement.

ATTEST:

TELECT, INC., a Washington Corporation

By: _____
Stanley E. Hilbert
Executive Vice President & CFO

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that Telect, Inc., is in compliance with each applicable term as set forth in the Economic Development Agreement dated _____. The term of this Agreement is _____ through _____. The number of new or retained Job Equivalents maintained pursuant to the Agreement for the previous twelve month period ending _____, 201_ is _____. If (1) the number herein reported is below the number required to be maintained pursuant to the Agreement (125 Job Equivalents), and (2) such shortfall has continued for more than 180 consecutive days for reasons other than an Event of Force Majeure (as defined in the Agreement), I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31st of each year this Agreement is in force.

ATTEST:

TELECT, INC., a Washington Corporation

By: _____
Stanley E. Hilbert
Executive Vice President & CFO

Date

NOTE:

This Certificate of Compliance should be mailed to:
City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358